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Cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, in accordance with Human Rights Council resolution 19/6.

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Report of the Special Rapporteur in the field of cultural rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 19/6 and focuses on the enjoyment of cultural rights by women on an equal basis with men.

The Special Rapporteur proposes to shift the paradigm from one that views culture as an obstacle to women's rights to one that seeks to ensure equal enjoyment of cultural rights; such an approach also constitutes an important tool for the realization of all their human rights.

The report underlines the right of women to have access to, participate in and contribute to all aspects of cultural life. This encompasses their right to actively engage in identifying and interpreting cultural heritage and to decide which cultural traditions, values or practices are to be kept, reoriented, modified or discarded.

Gender, culture and rights intersect in intricate and complex ways, and cultural rights must be understood as also relating to who in the community holds the power to define its collective identity. The reality of intra-community diversity makes it imperative to ensure that all voices within a community, including those that represent the interests, desires and perspectives of specific groups, are heard, without discrimination.

Preserving the existence and cohesion of a specific cultural community, national or subnational, should not be achieved to the detriment of one group within the community, for example, women. Importantly, combating cultural practices that are detrimental to human rights, far from jeopardizing the existence and cohesion of a specific cultural community, stimulates discussion, which facilitates an evolution towards embracing human rights, including in a very culturally specific way.

The present report analyses notions of gender that restrict the cultural rights of women and proposes a set of questions to be asked whenever gender-biased social arrangements are defended in the name of culture. It includes a series of recommendations and a list of issues to be addressed in assessing the level of implementation, or non-implementation, of the cultural rights of women. Such information could usefully be included in State party reports to the relevant treaty bodies and to the universal periodic review.

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I. Introduction

1. Resolutions 10/23 and 19/6 of the Human Rights Council, establishing, initially as an independent expert, and renewing the mandate of the Special Rapporteur in the field of cultural rights, recognize the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress and its application. Both resolutions recall that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law or limit their scope, and call for the integration of a gender perspective into the work of the Special Rapporteur. The present report focuses on existing challenges to and opportunities for ensuring the right of women and girls to take part in cultural life on the basis of equality.

2. The notion that culture is restricted to certain areas of life, in particular those areas unregulated by the State, and that it is of greater relevance in some societies than in others is a misconception. Culture permeates all human activities and institutions, including legal systems, in all societies across the world. Culture is created, contested and recreated within the social praxis of diverse groups interacting in economic, social and political arenas. It is manifested in individual and collective self-expression, understanding and practices. Delinking culture from the historical processes and contexts in which it is embedded essentializes cultures, which are then presumed to be static and immutable, homogenous and monolithic, apolitical and detached from prevailing power relations.[1]

3. Gender, culture and rights intersect in intricate and complex ways. The tendency to view culture as largely an impediment to women's human rights is both oversimplistic and problematic. By attributing self-propelling agency to "culture" independent of the actions of human beings, it diverts attention from specific actors, institutions, rules and regulations, keeping women subordinated within patriarchal systems and structures. It also renders invisible women's agency in both reproducing and challenging dominant cultural norms and values. Nevertheless, many practices and norms that discriminate against women are justified by reference to culture, religion and tradition, leading experts to conclude that "no social group has suffered greater violation of its human rights in the name of culture than women"[2] and that it is "inconceivable" that a number of such practices "would be justified if they were predicated upon another protected classification such as race".[3] The use of discourses of cultural relativism to challenge the universal legitimacy and applicability of human rights norms is a serious concern (A/HRC/4/34, in particular paras. 19, 42 and 68).

4. The Special Rapporteur wishes to stress that "the critical issue, from the human rights perspective, is not whether and how religion, culture and tradition prevail over women's human rights, but how to arrive at a point at which women

[1] See, in particular, Uma Narayan, "Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism", *Hypatia*, vol. 13, No. 2 (Spring 1998) and the report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/4/34), para. 6.

[2] Arati Rao, "The Politics of Gender and Culture in International Human Rights Discourse", in *Women's Rights, Human Rights: International Feminist Perspectives*, Julie Peters and Andrea Wolper, eds. (New York and London, Routledge, 1994), p. 167.

[3] Berta Esperanza Hernández-Truyol, "Out of the Shadows: Traversing the Imaginary of Sameness, Difference and Relationalism — A Human Rights Proposal", *Wisconsin Women's Law Journal*, vol. XVII, No. 1 (Spring 2002), p. 142.

own both their culture (and religion and tradition) and their human rights". "The struggle for women's human rights is not against religion, culture, or tradition."[4] Cultures are shared outcomes of critical reflection and continuous engagements of human beings in response to an ever-changing world. The task at hand is to identify how human rights in general, and equal cultural rights in particular, can enable women "to find paths through which we may view tradition with new eyes, in such a way that it will not violate our rights and restore dignity to ... women ... [and] change those traditions which diminish our dignity".[5]

5. The realization of women's cultural rights is closely dependent on the enjoyment of other rights. The reverse is also true. Situated at the juncture of civil and political rights, on the one hand, and economic, social and cultural rights, on the other, women's equal cultural rights are transformative: they are empowering rights, providing important opportunities for the realization of other human rights. This report proposes to shift the paradigm from one that views culture merely as an obstacle to women's rights to one that seeks to ensure equal enjoyment of cultural rights; such an approach also constitutes a critical tool for the realization of all their human rights.

II. Equal cultural rights: challenges and opportunities

6. International standards related to cultural rights are too numerous to be reasserted in this report.[6] However, particular mention must be made of article 13 (c) of the Convention on the Elimination of All Forms of Discrimination against Women, by which States are committed to ensure, on the basis of equality of men and women, the right to participate in recreational activities, sports and all aspects of cultural life. This provision echoes article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights, which stipulate the right of everyone to participate in cultural life and enjoy the benefits of scientific progress and its applications. These provisions have to be applied in accordance with the principle of non-discrimination on the basis of sex, also specified in these instruments and which, according to some scholars, has attained the status of *jus cogens*.[7]

7. As the Special Rapporteur has stated previously (A/HRC/14/36, para. 9), cultural rights protect the rights of each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they assign to human existence and development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts,

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[4] Marsha Freeman, "Article 16 CEDAW and the Right to Practice One's Beliefs", in *Women's Human Rights and Culture/Religion/Tradition: International Standards as Guidelines for the Discussion?*, Netherlands Institute of Human Rights (SIM) Special No. 32, Rikki Holtmaat and Ineke Boerefijn, eds. (Utrecht, 2010), pp. 63-64.

[5] R. Aída Hernández Castillo, "National Law and Indigenous Customary Law: The Struggle for Justice of Indigenous Women in Chiapas, Mexico", in *Gender Justice, Development, and Rights*, Maxine Molyneux and Shahra Razavi, eds. (Oxford and New York, Oxford University Press, 2002), p. 57.

[6] See the report of the Independent Expert in the field of cultural rights (A/HRC/14/36).

[7] See, for example, Christine Chinkin, Marsha Freeman and Beate Rudolf, eds., *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford, Oxford University Press, 2012).

institutions and ways of life. They also protect access to tangible and intangible cultural heritage as important resources enabling such identification and development processes. Cultural rights encompass a broad range of issues, including self-expression and creation; information and communication; language; identity and simultaneous belonging to multiple, diverse and changing communities; the pursuit of specific ways of life; education and training; taking part in cultural life, and the conduct of cultural practices.

A. Culture, identity and gender: a complex interface

1. Individual and collective identities

8. Cultural identity is "important for the well-being and dignity of individuals and communities".[8] Individual identities promote characteristics that distinguish one person from another, while collective identities privilege similarities among the individual members of a group.

9. However, "each individual is the bearer of a multiple and complex identity, making her or him a unique human being and, at the same time, enabling her or him to be part of communities of shared culture" (A/HRC/14/36, para. 23). Collective identities never encompass all the characteristics of any individual: they are formed on the basis of privileging certain parts of individual identities. Whenever people use the pronoun "we", referring to a collectivity, they select those markers of personal identity that highlight their link with a particular group of people. Collective identity plays a central role in concepts and processes of inclusion/exclusion that define who we are and who we are not; who the other(s) is/are; what we can do and what we cannot do.

10. Belonging does not confer equality, however, and every "collective identity" is in a constant state of flux, being defined and redefined in response to external factors and internal reflection. Collective identity thus entails contestations over meanings and definitions, and is always linked to the underlying structures and dynamics of power related to accessing and exercising control over economic, political and cultural resources.[9]

11. Identities, individual and collective, are informed by values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life, but equally by other aspects of human life, such as professional training; economic, social and political engagements; urban or rural environments; wealth or poverty; or, more generally, the particular geographical, socioeconomic and cultural context of a person's life. This is equally true of women and men. It is of vital importance that individuals not be forced to identify themselves in terms of a singular aspect of their identity, such as being female, or of a particular ethnic, religious or linguistic background. Everyone is constituted of a diversity of selves involved in "a constant

[8] Yvonne Donders, *Towards a Right to Cultural Identity?*, School of Human Rights Research Series No. 15 (Antwerp, Intersentia, 2002), p. 39.

[9] Farida Shaheed, "Citizenship and the Nuanced Belonging of Women", in *Scratching the Surface: Democracy, Traditions, Gender*, Jennifer Bennett, ed. (Lahore, Heinrich Böll Foundation, 2007). See also Nira Yuval-Davis, *The Politics of Belonging: Intersectional Contestation* (London, Sage, 2011).

contradictory state of becoming, in which both social institutions and individual wills are deeply implicated".[10]

12. Gender equality analyses consistently emphasize women's diverse identities and related implications. The Beijing Declaration adopted at the Fourth World Conference on Women, for example, acknowledges, in paragraph 32, that women and girls face multiple barriers "because of such factors as their race, age, language, ethnicity, culture, religion or disability or because they are indigenous people". "Intersectional" identities oblige women to deal with multiple and many-layered forms of oppression simultaneously. For example, Traveller women in Ireland face "triple discrimination — as Travellers, as women, and as Traveller women"; more in contact with settled people than men, women are more likely to confront racism from outsiders while being blamed by other Travellers if they speak out against negative internal practices, which is perceived as speaking against the community.[11] A dualistic "either/or" perspective on identity cannot account for the interacting, intersecting and shifting positions of domination and subordination that the same person occupies because of her varied identities.[12]

13. Recognizing and protecting multiple identities helps to resist and overcome political forces, in particular identity politics, which seek to deny any possibility of pluralism within self and society, as well as gender equality.

14. People must be able to thrive "both as an individual and as a member of larger communities". Stressing that "women's full participation in the cultural and political life of the state" is undermined by "the systematic denial of their political, economic, social, civil and other legal rights", scholars insist that human rights must focus on ensuring "personhood" for women, which is both individualistic and relational.[13] This resonates with the notion of "citizen participation" advanced by gender equality advocates and scholars, for example, in Latin America. One obstacle to such participation is that cultural rights have been the "poor cousins" of economic and social rights, receiving scant attention at the national and international levels. Women's cultural inequality, coupled with economic and social inequalities, "makes it difficult, if not impossible, for them to exercise their civil and political rights, to enjoy personal autonomy and to participate in the political life of their community or country".[14]

2. Women, the essentialization of culture and power relations

15. "All societies have to address three incontrovertible facts of life: birth, death and the existence of two sexes (at least). Consequently, all societies are obliged to construct gender systems defining the roles, responsibilities and rights of girls/women and boys/men. Whether of great inequality or more equality, the constructs

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[10] Angela P. Harris, "Race and Essentialism in Feminist Legal Theory", *Stanford Law Review*, vol. 42, No. 3 (February 1990), p. 584.

[11] Niamh Reilly, "Women's Rights as Cultural Rights: The Case of the Irish Travellers", *Human Rights Dialogue*, Series 2, No. 12 (Spring 2005), special issue: "Cultural Rights", p. 17.

[12] Diane Otto, "Rethinking the 'Universality' of Human Rights Law", *Columbia Human Rights Law Review*, vol. 29 (Fall 1997), p. 29.

[13] Hernández-Truyol, pp. 135, 147, 144 and 146.

[14] Gaby Oré Aguilar, "The Economic, Social and Cultural Rights of Women in Latin America: Status and Strategies", *Women's Health Journal*, 1 July 2007, pp. 4 and 11.

of gender play a central role in people's self-definition as a social collectivity",[15] and permeates all aspects of life.

16. The Special Rapporteur notes with concern the tendency, orientalist as well as occidentalist, to essentialize culture. This runs contrary to facts and "overlooks the economic and political underpinnings of women's subordination and the construction of culture within the dynamics of power relations at local, national and global levels" (A/HRC/4/34, para. 20). Like all social constructions, concepts of gender change over time, and according to socioeconomic and geographical contexts. Resisting cultural essentialism requires "the cultivation of a critical stance that 'restores history and politics' to prevailing as historical pictures of 'culture'".[16]

17. Essentialist portraits of culture often depict culturally dominant norms as central components of "cultural identity". Viewing culture and attendant beliefs, including customs, traditions and religious interpretations, as "static" obstructs the realization of women's human rights because it presupposes that particular values, practices and beliefs are "intrinsic" to a given culture and, therefore, immutable.

18. Cultural norms presented in legal disputes or political debates, far from being neutral descriptions of a community's way of life, are "expressions of power relations that are often limited to the dominant voices in a specific social interaction". Such "articulations should be read as competing efforts to preserve certain social, economic, and political arrangements".[17]

19. Women not only physically reproduce the community by giving birth to new members; they are often also tasked with reproducing the dominant culture of these communities.[18] Frequently, the norms and practices assigned through unequal gender roles and rights are projected as essential core values of a particular community, centrally important to collective identity. Cast as the "privileged signifiers" of community differences,[19] women's conformity to the status quo becomes equated with the "preservation of culture" and challenges to existing norms and practices equated with "cultural betrayals". This has several consequences. Those contesting prevailing norms and practices to promote gender equality may be condemned as "cultural traitors". Matters concerning women may remain bound by tradition even after other aspects of social life have undergone significant change.[20] Alternatively, cultural traditions that granted women certain rights, such as rights to/over land, may be weakened or discarded.

20. Scholars highlight that, ironically enough, the cultural practices being upheld today in many countries that experienced colonization are often those that were selected, promoted as general and privileged by the colonial powers. In addition, a number of "traditional" male leaderships derived their authority from colonial

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[15] Shaheed, p. 24.

[16] Narayan, p. 92.

[17] Celestine Nyamu, "How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?", *Harvard International Law Journal*, vol. 41 (Spring 2000), p. 406.

[18] See Nira Yuval-Davis, "The Bearers of the Collective: Women and Religious Legislation in Israel", *Feminist Review*, vol. 4 (1980), pp. 15-27.

[19] Deniz Kandiyoti, "Identity and its Discontents: Women and the Nation", *Millennium — Journal of International Studies*, vol. 20, No. 3 (March 1991), pp. 429-443.

[20] See Narayan.

power.[21] Scholars stress the crucial role of the colonial period in defining contemporary customary law, for example in African countries,[22] and the need to review, analyse and understand the role of political, social and economic institutions involved in the production of culture and the shaping of gender relations. Hence, one conclusion is that "[a]ssertions of culture in family law are best viewed as a matter of current politics rather than descriptions of age-old tradition".[23]

21. The conventional view of perceiving "a radical disjuncture between the spheres of formal law and culture" is misplaced. Such a perception tends to endorse "dominant articulations of culture as accurate representations of a community's way of life", thereby allowing "culture to be defined exclusively by those whose view of culture disadvantages women".[24] Formal law and policy are closely linked to cultural interpretation, and State institutions play an active role in defining culture. Moreover, actual practices on the ground are usually more varied than suggested by formalized versions projected in discourse as well as under the law.

22. Women's role as important signifiers of cultural groups stands in sharp contrast to their lack of influence in relevant decision-making processes and their limited opportunities to further develop cultural life. When women do claim their right to not participate in specific customs, to interpret, amend and reshape the contours of their cultural communities, they often confront disproportionate opposition, including different forms of violence, for acts as apparently simple as freely choosing who to marry, how to dress or where to go. The severity of such reactions stems from the centrality of gender constructs in collective life. The disruption of prescribed gender rules, roles and concepts in fact demands a reconfiguration of the community's collective identity as a whole.

23. Not all women challenge the dominant cultural norms for a number of reasons: they may benefit, at least in part, from the overall arrangements; they may fear the consequences of challenging existing norms and practices or lack the support mechanisms necessary to act; they may not have access to alternative views and ways of life; or they may not adhere to emancipatory values. Consequently, intentionally or unintentionally, women may reproduce and contribute to sustaining harmful practices that violate the rights of other women, in particular their daughters, for example in relation to education, cultural participation and health issues.

B. Opportunities: cultural rights as transformative rights

1. Equal cultural rights for women: key elements

24. Three principal and interrelated components of the right to take part in cultural life elaborated by the Committee on Economic, Social and Cultural Rights[25] and the Special Rapporteur (A/HRC/14/36, A/HRC/17/38 and A/HRC/20/26) are:

[21] See, for example, Narayan; Charu Gupta, *Sexuality, Obscenity, Community: Women, Muslims, and the Hindu Public in Colonial India* (Delhi, Permanent Black, 2001).

[22] Nyamu, p. 405. See also Otto.

[23] Martin Chanock, "Neither Customary Nor Legal: African Customary Law in an Era of Family Law Reform", *International Journal of Law, Policy and the Family*, vol. 3, No. 1 (1989), pp. 72 and 86.

[24] Nyamu, p. 401.

[25] General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 15.

(a) participation in; (b) access to; and (c) contribution to cultural life. The Special Rapporteur has further elaborated that this includes the right to access and enjoy tangible and intangible heritage. Some key elements with regard to women are as follows.

25. Participation covers not only the right of individuals to act freely, to choose one's own identity and to manifest one's own cultural practices, but also the right not to participate in specific traditions, customs and practices, particularly those that infringe on human rights and dignity.

26. In many ways, the "[f]reedom to participate in cultural life stands at the very core of liberty".[26] Women must have the freedom to join and leave any given cultural community and be associated with different communities simultaneously. As stated by the Committee on Economic, Social and Cultural Rights, "no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity. Likewise, no one shall be excluded from access to cultural practices, goods and services."[27]

27. In the area of freedom of religion or belief, the Human Rights Committee, for its part, considers that

> States parties [to the International Covenant on Civil and Political Rights] must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one's choice — including the freedom to change religion or belief and to express one's religion or belief — will be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms, protected by article 18, must not be subject to restrictions other than those authorized by the Covenant and must not be constrained by, inter alia, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others. Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion.[28]

28. From a human rights perspective, participation must ensure decision-making (A/HRC/20/26, para. 43). Women must enjoy the freedom to create new communities of shared cultural values around any markers of identity they want to privilege, new cultural meanings and practices without fear of punitive actions, including any form of violence. This means that women must be able to embrace or reject particular cultural practices and identities as well as to revise and (re)negotiate existing traditions, values or practices, regardless of their provenance. Active engagement in the cultural sphere, in particular, the "liberty to contest hegemonic discourses" and "given" cultural norms offers women, as well as other marginalized groups and individuals, crucial possibilities to (re)shape meanings. It also helps to build central traits of democratic citizenship, such as critical thinking, creativity, sharing and sociability.[29]

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[26] Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (Yale University Press, 2012), p. 11.

[27] General comment No. 21 (2009), para. 22.

[28] General comment No. 28 (2000) on equality of rights between men and women, para. 21.

[29] See Sunder.

29. The Committee on Economic, Social and Cultural Rights has emphasized the need to take "appropriate measures to remedy structural forms of discrimination so as to ensure that the underrepresentation of persons from certain communities in public life does not adversely affect their right to take part in cultural life".[30] This suggests that measures are needed to ensure that particular communities are not exclusively represented by members traditionally vested with the power or authority to represent the community, such as religious leaders or community elders, most of whom are male, and that women are equally able to represent their communities.

30. Access covers, inter alia, the right of everyone to know, understand and benefit from the cultural heritage and cultural life of their own communities as well as that of other communities. Accessing and enjoying cultural heritage implies the ability, inter alia, to know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage; to contribute to the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes (A/HRC/17/38, para. 79). Access encompasses the right to freely engage with people and to benefit from ideas, events and information beyond those of one's own community(ies), regardless of frontiers and without fear of punitive actions, including from non-State actors.

31. Equal cultural rights would ensure women's ability to seek proactively knowledge and creative human expressions, scientific knowledge, applications and technologies (A/HRC/20/26, paras. 27 and 29) and to widen their horizon, including beyond the cultural communities in which they are born and raised. Women must be able to access cultural goods and resources, institutions and infrastructure that enable them to follow a specific way of life, including in the areas of leisure, sports, culture and education.

32. Information and communication technologies, including the Internet, are especially important for accessing information, establishing and developing contacts with persons with similar views beyond primary communities, as well as expressing oneself and contributing one's own knowledge and ideas.

33. Equal contribution to cultural life entails the ability to use imagination and intellect in both experiencing and producing works and events of one's own choice: spiritual and material, intellectual and emotional, including in all forms of artistic creativity, for example music and literature. Equally important is being able to engage in critical reflection to form conceptions of, and contribute to establishing, key values, norms and standards. Women must have the freedom to undertake scientific research, be recognized as knowledge holders and be able to contribute to the scientific enterprise without encumbrances (A/HRC/20/26, para. 39).

2. Cultural rights as empowering and transformative rights

34. All human communities, including nations, are characterized by a dominant culture that reflects the viewpoint and the interests of those with the power to ensure adherence to prescribed norms. The dominant culture is almost inevitably patriarchal in nature.

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[30] General comment No. 21 (2009), para. 52 (g). See also paras. 21, 22, 25, 49 (a) and (e), 52 (b) and 55 (a) and (b).

35. Every community also has multiple other subcultures, comprising groups which either do not accept or do not live according to, or in complete adherence with, the norms prescribed by the dominant culture. These include, depending on the contexts, ethnic or religious minorities, indigenous peoples, migrants, youth, marginalized populations such as the homeless, women, and groups who consciously reject the main dominant culture, for example human rights activists.[31]

36. Diverse and dissimilarly positioned groups within the same community have differing levels of acceptance of and dissimilar interests in maintaining or changing dominant cultural norms. They also wield differing levels of power and influence. Hence, some minority or "divergent" voices are ignored, or even completely silenced. A crucial question therefore is which groups are recognized and who within these groups is accepted as the legitimate voice of the "community" by the State and other official entities, as well as the international community.

37. To enjoy equal cultural rights, women must become equal participants and decision makers in all the cultural affairs of their own specific communities, and in the wider "general" society. For this, women's other human rights must be ensured, in particular their rights to freedom of movement, freedom of opinion and expression, religion or belief, and freedom of association, and freedom to participate in social, economic and political life, including in the decision-making processes in these arenas.

38. Conversely, realizing women's cultural rights, which encompass the right to transform existing cultural patterns and thinking, is essential for realizing women's human rights more generally. North or South, "[a]ll cultures contain spheres in which is it impossible for the members 'to think that they are thinking wrongly' — things are obvious, self-evident and natural", resulting in zones of self-imposed silences and rules being "adhered to because they are perceived as a moral duty and because they may be sanctioned by, for instance, some people becoming angry if such duties are not performed".[32] Gender equality cannot be achieved without overcoming such internalized obstacles in cultural life and, therefore, without ensuring the realization of cultural rights for women and girls.

39. In this sense, cultural rights are empowering, for they provide individuals with control over the course of their lives, facilitating the enjoyment of other rights.[33] A large part of the transformative aspect of cultural rights is being able to overturn presumed female and male characteristics and capabilities which, to a large extent, determine the scope of activities that a man or a woman can undertake in a given society.[34] This corresponds to the wider goals of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention aims to achieve

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[31] Farida Shaheed, "Violence Against Women Legitimised by Arguments of 'Culture': Thoughts from a Pakistani Perspective", in *Due Diligence and Its Application to Protect Women from Violence*, Carin Benninger-Budel, ed. (Brill, 2008).

[32] Tove Bolstad, "Kar-Contracts in Norway: Agreements Made by Men Concerning Women's Work, Ownership and Lives", Working Papers in Women's Law No. 46, August 1995, University of Oslo, Department of Public Law, Institute of Women's Law, pp. 26 and 27.

[33] Fons Coomans, "Content and Scope of the Right to Education as a Human Right and Obstacles to Its Realization", in *Human Rights in Education, Science and Culture: Legal Development and Challenges*, Yvonne Donders and Vladimir Volodin, eds. (United Nations Educational, Scientific and Cultural Organization, 2007), p. 185.

[34] See, for example, *Women, Culture and Development: A Study of Human Capabilities*, Martha Nussbaum and Jonathan Glover, eds. (Oxford University Press, reprinted 2007).

"transformative equality", that is, overcoming "prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions".[35]

III. Gender stereotypes and the obligation of States to eliminate discrimination

A. Direct, indirect and structural discrimination

40. International law has moved away from a narrow interpretation of the concept of discrimination on the ground of sex. In addition to direct and indirect discrimination between men and women, as noted in the thematic study by the Office of the High Commissioner for Human Rights on discrimination against women, in law and practice, the concept now encompasses "discrimination on the basis of gender stereotypes" as well as "multiple discrimination that specific groups of women face because of their sex or other characteristics" (A/HRC/15/40, paras. 9-11). Furthermore, "the importance of systemic and structural transformation of institutions and attitudes that reflect and entrench discrimination against women" has been stressed (ibid., para. 10) and the concept further developed, notably by the Committee on the Elimination of Discrimination against Women.[36]

41. Direct sex discrimination occurs when an explicit distinction is made between the rights and obligations of men and women, including in legal texts and norms, regulations and institutional practices.

42. Indirect sex discrimination occurs "when a law, policy, programme or practice appears to be neutral but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure".[37]

43. Systemic and structural discrimination refers to the ways in which laws and regulations, as well as cultural or religious traditions have constructed and maintained women's disadvantage based on socially and legally entrenched gender stereotypes; it thus overlaps direct and indirect discrimination. With respect to cultural rights, concepts that view males to be the head of household and the authoritative voice on matters relating to culture are especially problematic.[38] Neither direct nor indirect sex discrimination can be overcome without combating systemic and structural discrimination.

44. Structural or systemic discrimination is the most difficult to bring to the surface and to combat, especially in legal procedures. Eliminating this form of discrimination cannot be left to individuals contesting such discrimination in court cases against State or private institutions, including in the area of cultural life. States are under a positive obligation to eradicate all forms of structural and systemic

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[35] Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on temporary special measures, para. 7.

[36] General recommendation No. 25 (2004) and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

[37] General recommendation No. 28 (2010), para. 16.

[38] See Rikki Holtmaat and Jonneke Naber, *Women's Human Rights and Culture: From Deadlock to Dialogue* (Intersentia, 2011).

discrimination that may obstruct women's enjoyment of their right to take part in cultural life.[39] The content and scope of this implied obligation needs to be further elaborated, including in international law.

B. Stereotypes restricting cultural rights of women

45. Across the world and throughout history, different visions of men and women, presuming dissimilar capabilities and separate spheres of operation, have defined expectations about appropriate behaviour. While some gender differences are real, most are not, and constructed differences "have served in family and law, in church and state to prevent women from enjoying full personhood"[40] and human rights, including cultural rights.

46. For example, the Special Rapporteur was informed that in some countries, solo female singing has been banned and restrictions have been placed on female musicians performing in public concerts.[41] These prohibitions are unrelated to any inherent difference between men and women. They derive from the socially constructed rules of gender. Similarly, a particular instrument or song, the recounting of a particular story, or practising a particular craft or skill may be restricted to either men or women. The same is true for cultural or religious practices, customs and traditions that prohibit women from engaging in interpreting and applying particular texts, rituals or customs. Likewise, the practice of ancestral medical techniques, sometimes associated with the performance of ritual ceremonies, dancing and the playing of music, may be reserved for men, possibly leading to the exclusion of women from medical and pharmaceutical knowledge.[42]

47. For many women, the enjoyment of cultural rights is impeded by de jure or de facto restrictions on their right to freedom of movement. Socially constructed gender normative rules may exclude women from public spaces, hearings or meetings. Women may be denied the possibility of being a member, participating in deliberations, or voting in particular cultural or religious institutions. Participation in public life may be obstructed by a fear of sexual harassment or violence and by social or religious "moral policing". Equally, however, participation in cultural activities may be hampered by a lack of facilities such as inadequate public toilets for women at the venues of cultural or sporting events such as stadiums. More specifically, formal and informal restrictions may prohibit women from driving a car, or travelling in buses, trains or planes without being accompanied by a male relative.[43]

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[39] Under the Convention of the Elimination of All Forms of Discrimination against Women, articles 2 (f) and 5 (a), in conjunction with article 13 (c); see Rikki Holtmaat, "Article 5 CEDAW and Culture/Religion/Tradition", in Holtmaat and Boerefijn, pp. 15-39.

[40] Hernández-Truyol, pp. 111, 133-134 and 483.

[41] Freemuse, www.freemuse.org/sw36684.asp.

[42] See, for example, Valentine M. Moghadam and Manilee Bagheritari, "Cultures, Conventions and the Human Rights of Women: Examining the Convention for Safeguarding Intangible Cultural Heritage, and the Declaration on Cultural Diversity", United Nations Educational, Scientific and Cultural Organization (UNESCO) Social and Human Sciences Sector (SHS) Papers in Women's Studies/Gender Research No. 1 (UNESCO, March 2005), in particular the appendix table.

[43] See Marsha A. Freeman, "The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention", in *Women's Rights, Human Rights*.

48. Women remain underrepresented in the fields of science, culture and the arts, even in countries with relatively long histories of formal and legal equality. For example, some research suggests that women have an equal chance to get their papers published in peer-reviewed international journals only when the sex of the author(s) is absolutely unknown to the reviewers.[44] Besides, although there are a significant number of female authors of literary prose or poetry, fewer women win literary prizes than men.[45] Opportunities to contribute to cultural life do not seem to be equal in the creative arts such as music, the fine arts and performing arts, or in mainstream media, in either public institutions or the private sector.[46] In some cases, cultural activities conducted mainly by women, such as storytelling, are marginalized.[47]

49. In the area of sports, factors contributing to gender-unequal opportunities include differentials in budgetary allocations for facilities, training and opportunities for girls and women, on the one hand, and boys and men on the other; unequal prizes for female and male events in the same sport; as well as unequal media coverage.

50. In the view of the Special Rapporteur, more attention should be paid to situations where publicly disseminated reports on cultural, scientific or sporting activities or events, including cultural and artistic performances and practices, mainly depict the participation of men. Media coverage may underrepresent women's role in creating, transmitting, performing and safeguarding cultural practices and expressions, as well as their role in scientific research and applications.[48]

51. Women's imperative to maintain belonging to a particular community (or communities) is intensified when they have little direct interaction with State institutions and are kept ignorant about their rights. Gendered systems of socialization and education may discourage women and girls from expressing their views and asserting their right to actively engage in interpreting cultural heritage and deciding which aspects are to be retained and which need to be altered or discarded altogether. Without linkages and alternative reference points outside their immediate community-bound circles and without access to support systems, women may feel compelled not to criticize or contravene particular cultural practices or customs. Fear that any divergence from their prescribed role will result in social or legal punishments, or in being ostracized and losing their community belonging is a powerful disincentive. Women and girls must not be obliged to choose between community belonging and citizenship, or between any of their other identities. As the primary guarantors of rights, States have the predominant role in ensuring that women as well as men recognize women's right to be rights claimants, in assisting women and girls to claim and exercise their rights and in supporting women to reshape the various communities they desire to be a part of.

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[44] Lutz Bornmann, Ruediger Mutz and Hans-Dieter Daniel, "Gender differences in grant peer review: a meta analysis". Available at: http://arxiv.org/vc/math/papers/0701/0701537v2.pdf.

[45] The Nobel prize for literature has been awarded to a woman only 12 times since it came into existence in 1901. See www.nobelprize.org/nobel_prizes/lists/women.html.

[46] For the literary arts, see the statistics presented at VIDA Women in Literary Arts, www.vidaweb.org/the-2011-count.

[47] Moghadam and Bagheritari, p. 5.

[48] See, for example, in the field of intangible cultural heritage, ibid., p. 6.

52. Legal pluralism can be problematic when communal or tribal courts or community elders are authorized to apply or implement "traditional" or "customary" values, norms and practices. The negative "impact of multiple legal systems, with discriminatory customary and religious laws and practice", on women was noted, for example, at the 15-year review of the Beijing Declaration and Platform for Action, held in 2010. However, a stereotypical approach may be unconsciously applied even within integrated singular legal systems.

53. It is worth noting in this respect that some constitutional frameworks providing for legal plurality have managed to institute a fairer balance between gender equality and recognizing cultural and religious identities. For example, South Africa recognizes the validity of traditional authorities and the right to enjoy and practise one's own culture, but enables these to be challenged under the South African Bill of Rights. The Constitution of Ghana recognizes a right to practise one's culture while prohibiting customary practices that dehumanize or injure the physical or mental well-being of any person. The Constitution of Uganda, addressing the tension between women's rights (art. 33) and the right to practise culture (art. 37), explicitly prohibits "laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status" (art. 33 (6)).

54. The Special Rapporteur notes that despite her research, she was not able to gather sufficient information on best practices developed at the national level, both by governmental authorities and non-governmental actors, to enhance the realization of the cultural rights of women on an equal basis with men. She fears that this, in itself, reflects a general lack of interest in the issue, despite the enormous potential that the realization of cultural rights has for women.

IV. Universality, equal cultural rights of women and cultural diversity

A. The pre-eminence of the principles of non-discrimination and equality

55. Equality and non-discrimination on the basis of sex are paramount principles in international and regional human rights law. States have the obligation under international law to put an end to stereotypes that lie at the root of multiple discriminations, as recognized in particular in article 5 of the Convention on the Elimination of All Forms of Discrimination against Women.

56. It is essential to recall that international human rights norms provide a clear negative answer to the question of whether restrictions on the cultural rights of women, which ultimately amount to restrictions on the principles of non-discrimination and equality, may be legitimately imposed under international law to preserve cultural diversity.

57. International documents repeatedly stress that respect for cultural rights or cultural diversity may not undermine the universality of human rights since these rights belong to all persons, without any discrimination. Most importantly, the Vienna Declaration and Programme of Action, in Part I, paragraph 5, states: "While the significance of national and regional particularities and various historical,

cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".[49] It further stresses, in Part II, para. 38, the importance of "the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism".[50]

58. Another important reference is the UNESCO Convention on the Protection and Promotion of Cultural Expressions, which states in article 2:

> Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.

59. Other important references include article 4 of the Declaration on the Elimination of Violence against Women prohibiting States from invoking custom, tradition or religious considerations to avoid their obligations; various General Assembly resolutions in the area of combating all forms of violence against women;[51] the work undertaken by the Special Rapporteurs on violence against women, its causes and consequences (most notably A/HRC/4[illegible]1 and A/HRC/17/26, paras. 36 and 45) and on freedom of religion or belief (E/CN.4/2002/73/Add.2, in particular para. 58, and A/HRC/13/40, in particular paras. 37, 45, 46 and 58). Articles 44 and 46 of the United Nations Declaration on Indigenous Peoples, stipulating that all the rights and freedoms recognized in the Declaration are equally guaranteed to male and female indigenous individuals and that limitations to the exercise of rights shall be non-discriminatory, must also be mentioned.

60. As she stated in her first thematic report to the Human Rights Council, the Special Rapporteur stresses that ensuring the mutual protection of cultural rights and cultural diversity shall be based on (a) the recognition of the diversity of cultural identities and expressions; (b) equal treatment and respect for the equal dignity of all persons and communities, without discrimination based on their cultural identities; and (c) openness to others, discussion and intercultural exchanges (A/HRC/14/36, para. 30). Cultural diversity is not a justification for practices that violate women's human rights; not all cultural practices can be considered as protected in international human rights law, and cultural rights may be subject to limitations in certain circumstances (ibid., paras. 30-35). Stated more explicitly: the principle of non-discrimination, which lies at the root of the principle of universality of human rights, must always be respected.

61. Preserving the existence and cohesion of a specific cultural community, national or subnational, should not be achieved to the detriment of one group within

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[49] See also the preamble to and article 5 of the UNESCO Declaration on Cultural Diversity.

[50] The Beijing Platform for Action, in paragraph 9, expresses similar viewpoints, but adds that "full respect for various religious and ethical values … should contribute to the full enjoyment by women of their human rights". See also Otto.

[51] Recent examples are resolutions 63/155, para. 9, and 65/187, paras. 8 and 16 (b). See the report of the Secretary-General on intensification of efforts to eliminate all forms of violence against women (A/65/208).

the community, such as women, especially when that group is unable to participate effectively in decision-making processes. Combating cultural practices detrimental to human rights, far from jeopardizing the existence and cohesion of a specific cultural community, stimulates discussion that facilitates a reorientation of culture towards embracing human rights. Indeed,

> an engagement with culture does not erode or deform local culture but rather challenges its discriminatory and oppressive aspects. ... Negotiating culture with human rights concerns inherently questions, delegitimates, destabilizes, ruptures and, in the long run, destroys oppressive hierarchies. It also contributes to harnessing the positive elements of local culture to advance human rights and gender equality, a process that also revalidates the culture itself (A/HRC/4/34, para. 53).[52]

62. The justification for direct discrimination against women by reference to culture or religion — which, according to information provided to the Special Rapporteur, continues — should be eliminated. In particular, the Special Rapporteur considers that the time has come to question the existence of legal norms that authorize distinguishing between women and men, including in the internal affairs of institutions that are based on a religious ethos or cultural identity; in many instances, this may lead to excluding women from taking part in the interpretation or development of cultural or religious life.

63. Claims that such distinctions may not be based on the idea of inferiority or superiority of either of the sexes should be analysed with great scrutiny, for example, using the guidelines suggested in paragraph 68 below. In this regard, the statement made in article 13 (d) (ii) of the Convention for the Safeguarding of the Intangible Cultural Heritage, according to which access to cultural heritage should be ensured "while respecting customary practices governing access to specific aspects of such heritage", cannot be interpreted as permitting gender-based discrimination (A/HRC/17/38, para. 76). It is essential to ensure that distinctions do not lead to indirect or structural discrimination against women and girls.

B. Asserting the principle of equality: essential but insufficient

64. Despite the near universal ratification of the Convention on the Elimination of All Forms of Discrimination against Women, a "deep schism" between the legal provisions of equality and women's lives has persisted across time and cultures, including in the international sphere; women simply do not enjoy the universal human rights to which they are entitled globally or locally, in the West or the East, the North or the South.[53] The Special Rapporteur is of the view that this is at least partly because women do not enjoy equal cultural rights.

65. The principle of universality of human rights can be a vehicle for building consensus, pluralism and democracy to enable women's attainment of full personhood through, inter alia, their cultural rights. The challenge, however, is that the complexities of gender inequality and the many layers and arenas it operates in cannot be addressed through a simple "one size fits all" theoretical model. Merely asserting the principle of "equality" is insufficient. Far greater and more rigorous

[52] See also Holtmaat and Naber.

[53] Hernández-Truyol, p. 120.

attention needs to be devoted to formulating and implementing culturally relevant measures that catalyse transformative equality processes in each particular area of discrimination. It is suggested therefore that there is a need to understand universality as a transformative dialogue in which disparities in power are acknowledged, the diversity of the world is recognized and positively asserted, and the material necessities for ensuring human dignity are also addressed.[54]

66. Particularly in the field of cultural rights, where a large part of the discrimination is structural or systemic, the principle of equality needs to be embraced in society, not just in law. This requires a complex interrogation of the contextual framework to pave the way for multidimensional and culturally sensitive "legitimacy norms", that is, "norms that are determinate because they have input from and thus consent of those governed by the rules, which will, in turn, result in adherence to the norms".[55] It must be stressed that the process of cultural legitimization and change inevitably takes place within a political context.[56]

67. Issues of legitimacy are a concern of gender equality advocates and women's rights movements. Research indicates that women's empowerment initiatives derive legitimacy from accounts of history highlighting women's contributions and challenges to the status quo and religion, but equally State commitments to gender equality.[57]

68. Human rights practice must guard against imposing outsiders' ideologies, but also against shielding from criticism community practices and norms that perpetuate women's subordination. It needs to incorporate simultaneously an internal discourse to find legitimacy within all cultures and cross-cultural dialogue as a reciprocal sharing of perspectives. The positing of cultural diversity and the universality of human rights as either irreconcilable or mutually exclusive must be unequivocally rejected. Whenever "gender-biased social arrangements are defended in the name of culture, the purported cultural norms need to be challenged"[58] by asking, inter alia:

- Do the purported cultural norms reflect an actual social practice?
- Are they representative of the community, or are they simply a generalization of the narrow interests of a few? In other words, is there a uniform interpretation of the source and nature of the practice/norm?
- Whose power is preserved through the use of the purported cultural norms?
- Who is challenging the practice/norm (outsider/insider, oppressed and/or marginalized person(s) within the community) and what are the claimed harmful outcomes of the practice/norm?

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[54] See, for example, Otto; Nyamu; and Abdullahi An-Na'im, "What Do We Mean By Universal?", *Index on Censorship*, 4/5 (September-October 1994).

[55] Hernández-Truyol, p. 162.

[56] Abdullahi An-Na'im, "State Responsibility Under International Human Rights Law to Change Religious and Customary Laws", in *Human Rights of Women: National and International Perspectives*, Rebecca Cook, ed. (Philadelphia, University of Pennsylvania Press, 1994).

[57] Women's Empowerment in Muslim Contexts: Gender, poverty and democratisation from the inside out, available at www.wemc.hk.com.

[58] Nyamu, p. 59. See also Partners for Law and Development, "Intersections Between Women's Equality, Culture and Cultural Rights", Report of the South Asia Plus Consultation on Culture, Women and Human Rights, 2-3 September 2010, Dhulikhel, Nepal.

- Is the label of culture being deployed to stifle a desirable and necessary political debate?

69. As previously stated by the Special Rapporteur, identifying exactly which cultural practices should be considered as being contrary to human rights is not always a simple task. It requires policies that unequivocally support an informed, open and participatory debate within all societies and communities so that cultural norms and practices detrimental to the enjoyment of human rights can be challenged. It also requires an independent judiciary able to adopt an informed decision on the basis of an explicitly human rights legal framework, and taking into consideration international human rights law and practice.

70. Cultural diversity is not to be confused with cultural relativism. The cultural diversity within a community and within each individual is at least as important as diversities across communities. These diversities must be vigorously respected, protected and promoted, for they are the kernels of a democratic order. In this regard, it must be remembered that despite the paucity of interaction between States and female citizens in many countries and areas of life, the State is a crucial source of legitimacy for women's cultural rights.

71. The reality of intra-community diversity makes it vital to ensure that all voices within a community are heard without discrimination in terms of representing the interests, desires and perspectives of that particular community. Women must be equally empowered to decide the criteria for, and conditions of, belonging to communities of shared cultural values, and to decide the normative content of values and the contours and context of practices that respect, protect and promote their human dignity.

V. Conclusion and recommendations

A. Conclusions

72. **The effective implementation of human rights standards requires measures that transform legislation into reality.**

73. **Human rights are always implemented and enjoyed within specific local cultural and socioeconomic conditions. They have to be realized within, and are thus contingent upon, the factors and dynamics operative on the ground, including local knowledge and practices, and specific cultural traditions, values and norms. Ensuring the cultural rootedness of human rights, in particular women's cultural rights, requires ownership of internationally established human rights among all communities. Human rights have to be "vernacularized",[59] including through "initiatives that ground human rights concepts in diverse cultural traditions, in a culturally relevant lexicon and**

[59] See, for example, P. Levitt and S. E. Merry, "Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States", *Global Networks*, vol. 9, No. 4 (October 2009), pp. 441-461 and M. Goodale, "Locating Rights: Envisioning Law Between the Global and the Local", in *The Practice of Human Rights: Tracking Law Between the Global and the Local*, M. Goodale and S. E. Merry, eds. (Cambridge, Cambridge University Press, 2007).

philosophical vocabulary".[60] This demands close cooperation between all relevant State and non-State actors in society.

74. The continuing development of human rights standards should be informed by the cultural diversity of humankind while recognizing that cultures are always dynamic: people's perceptions, views and actions, rather than abstracted "culture", drive social, economic, political and cultural developments. In the same way that all human rights standards constantly evolve, cultural beliefs and understandings, normative rules and values, as well as practices are continuously created, contested and (re)interpreted. In transforming their culture(s) by adopting new ideas and modes of operation, concerned people often continue to draw upon the moral and spiritual resources within their own traditions.

75. Women's perspectives and contributions must move from the margins of cultural life to the centre of the processes that create, interpret and shape culture. In order to ensure that the dominant culture of their societies is based on gender equality, the tendency to marginalize women's concerns and silence their voices must be overcome, obstructions impeding their equal participation in public life eliminated and their underrepresentation in the institutions and processes defining the culture of their communities surmounted. Women must be recognized as, and supported to be, equal spokespersons vested with the authority to determine which of the community's traditions are to be respected, protected and transmitted to future generations.

76. Measures are required to support and enhance the cultural legitimacy and symbolic validation of new tools and interpretations that enable practices harmful to women to be surmounted. These may include, for example, promoting knowledge about international human rights standards, revising historical narratives to reflect cultural diversity and highlight women's contributions, and documenting the actual diversity of practices and making these known. It is particularly important to support women's transformative initiatives: to listen to local women and build on the tools and terminology they use, including elements to be retrieved from cultural heritage that may have fallen into disuse.[61]

77. It is important to link the right to take part in cultural life with women's equal rights in the area of public and political life, as well as family life. These are intricately interlinked: "In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life."[62]

78. Women's cultural rights provide a new framework for promoting all other rights. The realization of equal cultural rights for women would help to reconstruct gender in ways that transcend notions of women's inferiority and subordination, thereby improving conditions for the full and equal enjoyment of their human rights in general. This requires a shift in perspective: from

[60] Farida Shaheed, "Reflections on human rights, traditional values and practices", contribution circulated at the workshop on the traditional values of humankind (A/HRC/16/37), p. 5.

[61] Oral information provided by anthropologist Jeanette Kloosterman, Oxfam Novib.

[62] Committee on the Elimination of Discrimination against Women, general recommendation No. 23 (1997) on women in political and public life, para. 10.

seeing culture as an obstacle to women's human rights to ensuring women's equal cultural rights.

B. Recommendations

79. **The Special Rapporteur recommends that States review the following issues so as to assess the level of implementation, or non-implementation, of the cultural rights of women in their territories on a basis of equality. States should adopt adequate measures in response, taking into consideration their three-fold obligations to respect, protect and fulfil the cultural rights of women, on the basis of equality with men:**

(a) **Restrictions on women wishing to undertake any form of art and self-expression, to enter cultural heritage sites or premises, to participate in cultural events or ceremonies and to engage in interpreting and applying particular texts, rituals or customs. This includes identifying cultural and religious practices, customs and traditions that prohibit such engagement by women;**

(b) **Ensuring women's mobility, in particular to attend or participate in cultural activities, and steps taken to facilitate their attendance/participation;**

(c) **The ability of women to access their own cultural heritage as well as that of others through, in particular, their right to information and their access to the Internet;**

(d) **The existence of rules or customs prescribing different educational content or levels for girls and boys;**

(e) **Measures adopted to ensure that women participate, on an equal basis with men, in identifying and selecting what constitutes cultural heritage, in assigning meaning to such heritage and in the decisions relating to what should be transmitted to future generations;**

(f) **The ability of women to engage freely with people, ideas and events beyond their own family and community, to be part of one or more cultural communities of their choice and to join and leave these communities, including religious communities, at will;**

(g) **The ability of women to participate in decision-making within their own communities and to contribute to cultural life, through the exercise of their freedoms of expression, association and thought, and their right to education;**

(h) **The freedom of women to refuse to participate in traditions, customs and practices that infringe upon human dignity and rights, to critique existing cultural norms and traditional practices and to create new cultural meanings and norms of behaviour;**

(i) **The existence of formal or informal dress codes for women and men and the consequences for contravening these on girls and women as compared to men;**

(j) **The resources, including financial support, given to women in comparison to men in the fields of art, sport and science. For example, States are encouraged to assess sports facilities in schools and communities to which**

girls and women have equal access; whether sufficient support is given to events promoting women's leisure activities and creative expressions such as song, dance, poetry and theatre; and whether female artists are well represented on radio and television and in cultural events.

80. **The Special Rapporteur further recommends that States:**

(a) **Abolish or modify laws and regulations, policies and programmes that are based on, apply or sustain negative or harmful gender stereotypes, including through legislative measures and social policies and information and educational programmes;**

(b) **Adopt all measures necessary to eliminate gender stereotyping among State officials in all fields and at all levels, in particular those dealing with education, culture, sports and science, and ensure that women's contributions to culture are fully reflected, especially in educational institutions, textbooks and curricula, in particular in the teaching of history;**

(c) **Exercise due diligence with respect to any unequal treatment or discriminatory conduct by private actors, paying special attention to the role of cultural, religious and educational institutions as well as the media;**

(d) **Take action against institutions, and non-State actors, that threaten women who critique harmful practices, claim their right to participate in cultural life or wish to leave a cultural community;**

(e) **Ensure equal opportunities for girls and women to access, take part in and contribute to cultural activities and an equal share of State support, in particular in the fields of arts, sports and the sciences;**

(f) **Make explicit reference to the Convention on the Elimination of All Forms of Discrimination against Women in all normative and policy frameworks relating to cultural diversity and group-based rights (A/HRC/4/34, para. 72);**

(g) **Withdraw all reservations to this Convention that have been entered with reference to culture, tradition, custom and/or religion (ibid.);**

(h) **Ensure that diverse women's voices within specific communities are heard and that their human rights are not sacrificed in the name of culture (ibid.);**

(i) **Ensure that respect for cultural diversity does not translate into a pluralistic legal system allowing for customary laws, traditions or practices that contravene women's human rights, including their cultural rights;**

(j) **Ensure that when there are competing views regarding what constitutes cultural norms and practices, the role of arbiter is played by individuals or entities that uphold women's equal rights;**

(k) **Ensure the training of judges in the area of human rights law and gender, in particular to disallow any "cultural defences" of direct or indirect discrimination against women that adversely affects their right to take part in cultural life;**

(l) **Enhance the participation of women, including through temporary special measures, in the legal professions and at all levels of the judiciary, as an**

important means of increasing women's contribution to the process of legal interpretation of the content and scope of human rights, including cultural rights;

(m) **Engage civil society women's groups and community leaders, traditional and religious leaders, as well as teachers and the media in dialogues about cultural changes "so as to facilitate social and cultural change and the creation of an enabling environment that is supportive of gender equality".**[63]

81. **The Special Rapporteur hopes that this report may serve as a catalyst for the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women to address more systematically the issue of the cultural rights of women. In addition, such information should be included in States' reports for the universal periodic review as well as to relevant treaty bodies, in particular the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women.**

82. **The Special Rapporteur suggests that the Committee on the Elimination of Discrimination against Women envisage adopting, when its schedule permits, a general recommendation on article 13 (c) of the Convention, possibly in relation to articles 2 (f), 5 (a) and (b), and 10 (c).**

83. **The Special Rapporteur suggests that interested Governments, national human rights institutions and non-governmental organizations gather good practices enabling women to enjoy their equal cultural rights.**

84. **She encourages academic institutions and scholars as well as civil society groups to gather evidence of the actual diversity of practices and to engage with women to identify measures that can catalyse transformative equality processes in difference spheres of life, in particular, cultural life, and to research the histories of diverse women that showcase their contributions to cultural norms and practices promoting justice for all.**

[63] "Concluding comments of the Committee on the Elimination of Discrimination against Women: Nicaragua" (CEDAW/C/NIC/CO/6), para. 12.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights

Report of the Secretary-General

Summary

The present report is submitted pursuant to paragraph 7 of General Assembly resolution 65/207 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights. The report, which covers the period from December 2010 to September 2012, contains information on the activities undertaken by the Office of the United Nations High Commissioner for Human Rights to establish and strengthen independent and autonomous Ombudsman, mediator and other national human rights institutions, as well as measures taken by Governments in this regard. It also includes information on support provided to such institutions at the international and regional levels; technical assistance provided jointly with United Nations agencies and programmes to Ombudsman, mediator and other national human rights institutions; and cooperation between national human rights institutions and regional and international mechanisms to promote and protect human rights. Information regarding the work of Ombudsman, mediator and other national human rights institutions in respect of specific thematic issues is also included. The report updates the reports of the Secretary-General to the General Assembly of 8 August 2011 (A/66/274) and to the Human Rights Council of 1 May 2012 (A/HRC/20/09).

* A/67/150.

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I. Introduction

1. The present report is submitted pursuant to paragraph 7 of General Assembly resolution 65/207 of 21 December 2010 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights.

2. In its resolution 65/207, the General Assembly reaffirmed its resolution 63/169 and recalled the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Assembly welcomed the rapidly growing interest in the creation of the Ombudsman, mediator and other national human rights institutions and recognized the role that these institutions can play, in accordance with their mandate, in support of domestic complaint resolution. It also stressed the important role that these institutions can play in advising Governments with respect to bringing national legislation and practices in line with international human rights obligations and recalled the role played by regional and international associations of such institutions in promoting cooperation and sharing best practices.

3. The General Assembly encouraged Member States to consider the creation or strengthening of independent and autonomous Ombudsman, mediator and other national human rights institutions and to develop and conduct, as appropriate, outreach activities at the national level, in collaboration with all relevant stakeholders, in order to raise awareness of the important role of the Ombudsman, mediator and other national human rights institutions. It also encouraged the Ombudsman, mediator and other national human rights institutions to operate, as appropriate, in accordance with the Paris Principles and other relevant international instruments, in order to strengthen their independence and autonomy and to enhance their capacity to assist Member States in the promotion and protection of human rights. The Assembly encouraged the institutions to request their accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in order to enable them to interact effectively with the relevant human rights bodies of the United Nations system.

II. Support by the Office of the United Nations High Commissioner for Human Rights for Ombudsman, mediator and other national human rights institutions

4. The Ombudsman, mediator and other national human rights institutions are essential partners of the Office of the United Nations High Commissioner for Human Rights (OHCHR). OHCHR accords high priority to assisting national partners, such as Ombudsman, mediator and other national human rights institutions, to strengthening their capacity and providing support for their establishment and effective functioning. Such institutions are part of a strong national protection system and have an important role in addressing core human rights concerns at the national level, ending impunity and ensuring accountability. They also ensure that international human rights norms and standards are respected at the country level. OHCHR therefore aims to establish and strengthen the Ombudsman, mediator and other national human rights institutions, with due regard to the Paris Principles.

5. OHCHR provides legal and technical assistance to ensure that Ombudsman, mediator and other national human rights institutions are established in compliance with the Paris Principles and that they work as credible and effective guarantors of human rights at the country level. OHCHR also assists the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and its Subcommittee on Accreditation, as well as regional networks of national human rights institutions and regional and international associations of Ombudsmen. OHCHR supports the Ombudsman, mediator and other national human rights institutions to actively address core human rights concerns, contribute to the rule of law, fight impunity, contribute to transitional justice mechanisms and establish partnerships with other national stakeholders and civil society. OHCHR has also supported the institutions to increase their outreach at the international level, including by encouraging their participation in United Nations human rights mechanisms.

6. During the reporting period, OHCHR continued to provide support to Ombudsman, mediator and other national human rights institutions through the fellowship programme by which staff from institutions accredited by the International Coordinating Committee with A status are selected to work in OHCHR for a period of up to 12 months. OHCHR hosted fellows from the national human rights institutions of India, Mauritania, Mongolia, Morocco, Peru, the Philippines, Qatar and the United Kingdom of Great Britain and Northern Ireland.

A. Advisory services provided by the Office of the United Nations High Commissioner for Human Rights

7. During the reporting period, OHCHR facilitated awareness-raising activities and reviewed constitutional or legislative frameworks for new and existing institutions. It provided tailored advice on the nature, functions, powers and responsibilities of national human rights institutions and elaborated comparative analyses. Capacity needs assessment, project formulation and evaluation missions were also undertaken to assist in establishing new institutions and strengthening existing ones.

8. OHCHR continued to provide advice and assistance through its country and regional offices, human rights advisers and human rights components of United Nations peacekeeping operations, as well as through collaboration with United Nations agencies, funds and programmes, regional and subregional coordinating bodies of national human rights institutions and Ombudsman associations.

9. During the reporting period, OHCHR provided advice and assistance to the Governments and/or Ombudsman, mediator and other national human rights institutions of Angola, Argentina, Benin, Botswana, Burundi, Cameroon, the Central African Republic, Chad, Chile, the Comoros, the Congo, Colombia, Côte d'Ivoire, the Democratic Republic of the Congo, Djibouti, Ecuador, Georgia, Guatemala, Guinea, Guinea-Bissau, Haiti, Indonesia, Ireland, Kazakhstan, Kyrgyzstan, Kuwait, Lesotho, Liberia, Libya, Lithuania, Madagascar, Mali, Malaysia, Malawi, Mauritius, Mozambique, Myanmar, Namibia, Niger, Nigeria, Oman, Peru, the Republic of Moldova, the Russian Federation, Seychelles, South Africa, Tajikistan, Timor-Leste, Togo, Tunisia, Panama, Sierra Leone, South Sudan, Sudan, Uganda, United Arab Emirates, Uruguay, Yemen, Zambia and Zimbabwe, as well as Somaliland.

1. The Americas and the Caribbean

10. During the reporting period, the OHCHR Regional Offices for South and Central America, the country offices in Bolivia (Plurinational State of), Colombia, Guatemala and Mexico, the human rights advisers to the United Nations country teams in Ecuador, Honduras, and Paraguay and the human rights component of the United Nations Stabilization Mission in Haiti, continued to provide advice and assistance to the establishment and strengthening of Ombudsman, mediator and other national human rights institutions.

11. In 2011, the OHCHR Office for South America, in collaboration with Offices of the Ombudsman of Argentina and Peru, organized training sessions on the United Nations instruments and mechanisms for indigenous peoples. The purpose of these activities was to build participants' capacity with respect to the use of international instruments and mechanisms on the rights of indigenous peoples.

12. In February 2011, the OHCHR Regional Office for South America held a workshop on human rights indicators for the staff members of the Office of the Ombudsman of Peru. The workshop focused on economic, social and cultural rights, in particular the rights to education, health and social security.

13. During the reporting period, OHCHR continued to provide assistance and support to the establishment of the national human rights institution in Uruguay. Several meetings were held with parliamentarians, Government officials and representatives of civil society organizations to promote the establishment of the institution in Uruguay. On 22 June 2012, the institution was inaugurated and the five members of its Board of Directors were officially designated.

14. In Chile, the OHCHR Office for South America participated in August 2011 in a round table, with various national actors, on the importance of the establishment of a Paris Principle-compliant national human rights institution. The round table was organized by the non-governmental organization Chilean Ombudsman Chapter, which aims at raising awareness about the need to create an Ombudsman in the country. On 20 May 2012, OHCHR conducted a half-day training for the Directors of the National Institute of Human Rights of Chile on reporting to the United Nations treaty bodies. The training included various good practices in the preparation of national and alternative reports and aimed at increasing knowledge and the capacity of the National Institute of Human Rights to report to the treaty bodies.

15. Since October 2010, the OHCHR Office in Colombia has been carrying out an analysis of the Office of the Ombudsman in Colombia, with a view to identifying the priorities, needs and challenges for the strengthening of the institution. The analysis will culminate in a report to the Ombudsman, with a special attention given to the mandate of the institution.

16. The OHCHR Office in Guatemala closely followed the selection and appointment process of a new Ombudsman in the spring of 2012 and participated in a public event to raising awareness on international standards with regard to the selection and appointment process of the Ombudsman. On 31 May 2012, the Congress appointed a new Ombudsman, who will assume office on 20 August 2012.

17. The OHCHR Office in Guatemala carried out capacity-building activities for the staff of the Office of the Ombudsman on the mandate and functions of national

preventive mechanisms under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

18. OHCHR, in cooperation with the Organisation international de la Francophonie, assisted in strengthening the capacity-building activities of the Office de la protection du citoyen et de la citoyenne in Haiti by continuing to provide a consultant to the Office. With the assistance of the consultant, the law revising the status of the Office de la protection du citoyen et de la citoyenne was prepared and submitted to the Parliament. It was adopted by the National Assembly and the Senate on 27 March and 3 May 2012, respectively.

19. In August 2011, OHCHR participated in the sixty-third Annual Conference of the International Association of Official Human Rights Agencies, held in Austin, Texas. Through its participation in the conference, OHCHR aimed at raising awareness regarding the Paris Principles and providing advice on existing practices of interaction between non-accredited national human rights institutions and the international human rights system.

2. Africa

20. During the reporting period, OHCHR Regional Offices for Central Africa, East Africa, Southern Africa and West Africa, the country offices in Togo and Uganda; the human rights advisers to the United Nations country teams in Guinea, Kenya, Madagascar, Niger and Rwanda, as well as those in the Great Lakes region, and the human rights components of the United Nations missions in Burundi, the Central African Republic, Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Guinea-Bissau, Liberia, Sierra Leone, Somalia and South Sudan, continued to provide advice and assistance to the establishment and strengthening of Ombudsman, mediator and other national human rights institutions in Africa.

21. In 2011, the OHCHR Regional Office for Southern Africa established contact with the Angolan authorities, including the Ombudsman, and explored the value of the Paris Principles in strengthening the existing human rights protection system in Angola.

22. During the reporting period, the OHCHR Office for Southern Africa engaged with the Government officials, members of Parliament and civil society organizations on the establishment of a national human rights institution in the Comoros. In November 2011, the law on the establishment of a national human rights institution was adopted by the Parliament, and the promulgation by the President is expected in 2012 (see A/HRC/20/9, para. 23).

23. OHCHR provided assistance in the development of a draft law to establish a national human rights institution in Lesotho. In the draft law it is proposed that the existing Ombudsman be included within the national human rights institution framework.

24. Since July 2011, following the violent demonstration that took place in Malawi, OHCHR and the Malawi Human Rights Commission are working together to monitor the human rights situation in the country. In May 2012, the former Chair of the Commission received threats and was arbitrarily arrested by the Government, following the public release of a report by the Commission on human rights violations in the country. OHCHR monitored the personal security of the then Chair by working closely with special procedures mandate holders.

25. During the reporting period, OHCHR worked closely with the United Nations Development Programme (UNDP) and the Ministry of Justice of Mozambique on the establishment of a national human rights institution. OHCHR closely followed the selection process of the commissioners, whose final appointment is still pending (see A/HRC/20/9, para. 24).

26. The OHCHR Office for Southern Africa has cooperated extensively with the Ombudsman of Namibia on the advancement of human rights at the national and regional levels.

27. OHCHR and the South African Human Rights Commission have established a task team to monitor the implementation of a project aimed at strengthening the Commission's capacity to address human rights issues related to non-nationals and combating discrimination. This cooperation includes monitoring places of immigration detention, and carrying out community outreach and capacity-building initiatives to prevent xenophobic activities in South Africa (see A/HRC/20/9, para. 21).

28. In March 2011, the OHCHR Office for Southern Africa, during a mission to Seychelles, provided information to the national human rights institution with regard to the accreditation process before the International Coordinating Committee.

29. OHCHR continued to support the efforts of the Human Rights Commission in Zimbabwe to promote the adoption of enabling legislation in compliance with the Paris Principles. The bill was adopted by Parliament in July 2012 and is currently pending before the President for promulgation.

30. The United Nations Integrated Peacebuilding Office in Sierra Leone and OHCHR continued to support the work of the Human Rights Commission in Sierra Leone by providing training to the appointed commissioners and assisting the Commission to effectively implement its core mandate by creating a Directorate of Monitoring and Research and supporting the implementation of its quasi-jurisdictional mandate.

31. The United Nations Mission in South Sudan and OHCHR continued to assist the South Sudan Human Rights Commission through the provision of a consultant, who elaborated a three-year strategic plan and a workplan for 2012, which was launched by the Vice-President of the Republic. During her visit to South Sudan, in May 2012, the United Nations High Commissioner for Human Rights met with the Commission and encouraged it to apply to the International Coordinating Committee for accreditation.

32. In May 2012, OHCHR held a meeting in Geneva with some of the newly appointed commissioners of the Sudan Human Rights Commission and provided them with substantive materials to enable the operationalization of the Commission.

33. During the reporting period, OHCHR provided technical advice and assistance to the newly established human rights commission in Somaliland to create institutional structures that would enable it to carry out its legal functions and to build the capacity of its commissioners and staff.

34. In collaboration with the United Nations Operation in Côte d'Ivoire, OHCHR provided legal advice on the draft legislation to amend the founding legislation of the National Human Rights Commission.

35. During the reporting period, the OHCHR Office in Guinea organized consultations with the Guinean authorities and other national stakeholders to raise awareness on the establishment of a national human rights institution in compliance with the Paris Principles.

36. During the reporting period, OHCHR strengthened the capacity of the national human rights institution in Guinea-Bissau by providing technical support to the reformulation of its legislation in order to adapt it to the Paris Principles, and also provided information on the accreditation process.

37. Since June 2011, OHCHR has supported the operational and capacity-building efforts of the Independent National Human Rights Commission in Burundi. OHCHR assisted the Commission in developing its three-year strategic plan of action and provided technical support to the Commission in preparation for its accreditation review by the International Coordinating Committee, which is scheduled for November 2012.

38. In June 2012, OHCHR and the Francophone Association of National Human Rights Commissions carried out a joint mission to Benin to assist the authorities in establishing a national human rights institution in line with the Paris Principles. Following consultations with a broad range of stakeholders, including State authorities, members of Parliament, civil society organizations and United Nations agencies, the Government committed itself to considering the bill on the national human rights commission.

39. In July 2012, OHCHR and the Organisation international de la francophonie contributed to the organization of national consultations between the public authorities and civil society in the Democratic Republic of the Congo, during which the establishment of a national human rights commission was also discussed.

40. OHCHR provided technical support in the process of establishing the National Human Rights Commission in Niger. As a result, on 10 May 2012, the Parliament of Niger adopted the law establishing the Commission, which incorporates the legal advice provided by OHCHR.

41. During the reporting period, the OHCHR Office in Uganda continued to provide the Human Rights Commission with technical and financial support in the areas of capacity-building, human rights monitoring, reporting and investigations, including prison monitoring. OHCHR, together with the Network of African National Human Rights Institutions, also supported an assessment of the capacity gaps of the Commission in March 2012, which resulted in recommendations concerning how to strengthen its institutional capacity, mandate and functions.

42. In February 2012, the National Human Rights Commission of Togo published a report on torture that confirmed the responsibility of high-ranking security services officials. The findings were challenged by the Government, and the Commission was put in a vulnerable position. OHCHR closely followed the situation and assisted in addressing the controversy around the report.

43. In May 2012, OHCHR provided legal advice to the Government of Chad as an update to previous legal advice provided in 2010, as the Government reinitiated a process to strengthen the National Human Rights Commission.

44. At the request of the National Commission on Human Rights and Freedoms of Cameroon, in July 2011 OHCHR conducted a gap analysis with a focus on the

institution's capacity to handle complaints of alleged human rights violations. The resulting analytical report identified shortcomings in the Commission's effectiveness to discharge its functions, and provided recommendations in this regard.

3. Asia and the Pacific

45. During the reporting period, the OHCHR Regional Offices for South-East Asia and the Pacific, the country offices in Nepal and Cambodia, the human rights advisers to the United Nations country teams in Papua New Guinea and Sri Lanka, and the human rights components of the United Nations Assistance Mission in Afghanistan and the United Nations Integrated Mission in Timor-Leste continued to provide advice and assistance to the establishment and strengthening of Ombudsman, mediator and other national human rights institutions in Asia and the Pacific.

46. In September 2011, a national human rights institution was established by presidential decree in Myanmar. An enabling law is in the process of being drafted, which will provide the new institution with a statutory basis. OHCHR has provided legal advice and guidance in the drafting process in order to ensure that the new law complies with the Paris Principles.

47. In December 2011, the National Assembly of Pakistan adopted a law to establish a national human rights institution following years of advocacy from national organizations, with advice and support provided by OHCHR and regional and international organizations.

48. OHCHR and the United Nations Integrated Mission in Timor-Leste continued to provide technical support to the Ombudsman in Timor-Leste, in particular on monitoring of detention facilities and the rights of detainees, which is a priority area for the institution. Support was also provided to the Office of the Ombudsman to establish monitoring guidelines and tools, as well as to train staff members in collecting information and monitoring the respect of human rights during the elections.

49. Since October 2011, OHCHR, together with the Asia-Pacific Forum of National Human Rights Institutions, has been following the next steps towards establishing a national human rights institution in Samoa. The Government of Samoa is considering the strengthening and expansion of the Ombudsman's mandate to include the protection and promotion of all human rights.

50. During the period under review, OHCHR, UNDP and the Asia-Pacific Forum of National Human Rights Institutions conducted a capacity assessment of the Commission on Human Rights in Sri Lanka (February 2012), the Human Rights Commission of Australia (April/May 2012) and the Human Rights Commission of the Philippines (July 2012) with a view to identifying capacity gaps and strengthening effectiveness.

4. Europe and Central Asia

51. During the reporting period, the OHCHR Regional Offices for Europe and Central Asia, the office in Kosovo, the human rights advisers in Albania, the Republic of Moldova, the Russian Federation, Serbia, South Caucasus, Tajikistan and the former Yugoslav Republic of Macedonia, and the human rights adviser of

the United Nations Regional Centre for Preventive Diplomacy for Central Asia in Turkmenistan, have continued to provide advice and assistance in the establishment and strengthening of national human rights institutions in Europe and Central Asia.

52. In 2011, OHCHR advocated for the adoption of a new law on the Ombudsman in Kazakhstan to encourage greater compliance with the Paris Principles. In September 2011, OHCHR supported the participation of the Ombudsman institution in the sixteenth Annual Meeting and Biennial Conference of the Asia-Pacific Forum of National Human Rights Institutions (see A/HRC/20/9, para. 57).

53. During the reporting period, OHCHR provided support and assistance to the Ombudsman offices in Kyrgyzstan and Tajikistan. Following a workshop on the Paris Principles conducted in Tajikistan in October 2011, the Ombudsmen of Tajikistan, Kyrgyzstan and Kazakhstan applied for accreditation to the International Coordinating Committee in March 2012.

54. Further to the visit in February 2011 of the United Nations High Commissioner for Human Rights to the Russian Federation, where she participated in the Annual Meeting of the Coordination Council of Subnational Ombudsmen, cooperation between OHCHR and the Federal Human Rights Commissioner and subnational Ombudsmen has been strengthened through regular working consultations and systematic dissemination of OHCHR publications to the subnational Ombudsmen in 63 regions of the Russian Federation. In May 2012, OHCHR carried out a workshop for the federal and subnational Ombudsmen on strengthening their interaction with United Nations human rights mechanisms. The workshop was instrumental in sensitizing the audience concerning the role of the Ombudsman in supporting the engagement of the Government with the human rights mechanisms, based on the Paris Principles and good practices of national human rights institutions in federal states. As a result, a joint plan of activities was adopted, aimed at increasing awareness and strengthening the capacities of the subnational Ombudsmen to promote follow-up to recommendations of treaty bodies, special procedures and the universal periodic review and at facilitating their engagement with human rights mechanisms.

55. A draft law on the amendment of the Law on the Seimas Ombudsmen was developed by the Government of Lithuania, following comments provided by OHCHR in July 2011 on the existing law. The Government has requested legal advice on the new draft legislation. Some of the previous comments provided by OHCHR have been incorporated in the new draft law, in particular those related to the broad mandate for promotion and protection of all human rights and the interaction with civil society organizations.

56. During the reporting period, OHCHR continued to support the process of creating a new Human Rights and Equality Commission in Ireland. In December 2011, OHCHR provided a technical note with advice on the merging of the Irish Human Rights Commission with the Irish Equality Authority. In July 2012, upon request from the Minister of Justice, Equality and Defence, OHCHR provided legal advice on the establishment of the new Irish Human Rights and Equality Commission in order to ensure compliance with the Paris Principles.

57. From 25 to 27 July 2012, OHCHR participated in a meeting on national preventive mechanisms under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment organized

by UNDP and the Centre for Human Rights of the Republic of Moldova, in Chisinau. OHCHR gave a presentation on how the Centre could be strengthened to ensure compliance with the Paris Principles and better fulfil its role as a national preventive mechanism.

5. Middle East and North Africa

58. During the reporting period, the OHCHR Regional Office for the Middle East and North Africa, the United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region, the OHCHR offices in Mauritania and the Occupied Palestinian Territory and the human rights components of the United Nation Assistance Mission for Iraq, continued to provide advice and assistance to the establishment and strengthening of Ombudsman, mediator and other national human rights institutions in the Middle East and North Africa.

59. During the reporting period, OHCHR provided legal advice on draft legislation on national human rights institutions in Libya, Kuwait, Tunisia, the United Arab Emirates and Yemen (see A/HRC/20/9, para. 40).

60. OHCHR has been working with the Commission on Human Rights of Oman by providing technical advice to ensure its compliance with international standards. In March 2012, OHCHR attended a seminar in Muscat organized by the Commission on Human Rights of Oman, at which it presented the Paris Principles and discussed how national human rights institutions could engage with the international human rights system.

B. Support by the Office of the United Nations High Commissioner for Human Rights to regional initiatives of the Ombudsman, mediator and other national human rights institutions

1. The Americas and the Caribbean

61. In November 2011, OHCHR supported the organization of and participated in the tenth Annual Meeting of the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, held in Antigua, Guatemala. A regional workshop was also held on business and human rights, which led to the adoption of a regional plan of action for the implementation of the Edinburgh Declaration on Business and Human Rights (see A/HRC/20/9, para. 49). The plan of action was presented at the twenty-fifth Annual Meeting of the International Coordinating Committee.

2. Africa

62. In October 2011, OHCHR participated in the Biennial Conference of the Network of African National Human Rights Institutions in Cape Town, South Africa, on the role of national human rights institutions in addressing the rights of older persons and persons with disabilities. A declaration was adopted at the end of the Conference (see A/HRC/20/9, para. 51).

63. In January 2012, OHCHR organized a capacity-building workshop in Brazzaville for members and staff of the national human rights institutions in Burundi, Cameroon, the Central African Republic, the Congo, the Democratic

Republic of the Congo, Equatorial Guinea, Gabon, Rwanda and Sao Tome and Principe (see A/HRC/20/9, para. 53).

64. The OHCHR country office in Togo hosted the seventh consultative meeting of the Heads of United Nations Human Rights Field Presences in West Africa in Lomé, from 16 to 18 May 2012. The meeting examined the situation of human rights in the subregion and held discussions on priority themes, including human rights in electoral processes, with particular attention to the role and responsibility of human rights non-governmental organizations. It also explored technical support to national human rights institutions in the region.

65. In October 2011, OHCHR and the Network of African National Human Rights Institutions organized a regional workshop on business and human rights in Yaoundé. A regional action plan was adopted for the implementation of the Edinburgh Declaration. The plan was presented at the twenty-fifth Annual Meeting of the International Coordinating Committee.

3. Asia and the Pacific

66. In October 2011, OHCHR participated in the Regional Conference on Business and Human Rights in Seoul, which was co-hosted by the Asia-Pacific Forum of National Human Rights Institutions and the National Human Rights Commission of the Republic of Korea, in follow up to the Edinburgh Declaration on Business and Human Rights. A regional action plan on the implementation of the Declaration was adopted. The plan was presented at the twenty-fifth Annual Meeting of the International Coordinating Committee.

4. Europe and Central Asia

67. During the reporting period, OHCHR provided technical and financial assistance for the establishment of the Permanent Secretariat for the European Group of National Human Rights Institutions. In April 2012, a grant agreement was signed between OHCHR and the Chair of the European Group that will provide for the recruitment of a Director for the Permanent Secretariat.

5. Middle East and North Africa

68. OHCHR participated in a seminar on strengthening the capacities of national human rights institutions in conflict and post-conflict situations in North Africa, organized jointly by the Egyptian National Council for Human Rights, Bristol University and the Network of African National Human Rights Institutions in Cairo in December 2011.

C. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

1. Subcommittee on Accreditation

69. OHCHR provided secretarial support to the meetings of the Subcommittee on Accreditation held in Geneva in May and October 2011.

70. OHCHR also provided secretarial support to the meeting of the Subcommittee on Accreditation in March 2012. During that meeting, the Subcommittee considered

five new applications for accreditation.[1] The Commissioner for Human Rights of Kazakhstan, the Ombudsman of Kyrgyzstan, the National Human Rights Commission of Mali and the Human Rights Ombudsman of Tajikistan were accredited B status. The accreditation decision for the Ombudsman of Bermuda was deferred to the next meeting of the Subcommittee.

71. The Subcommittee on Accreditation reviewed the accreditation status (applications for re-accreditation) of nine national human rights institutions, in Bolivia (Plurinational State of), Burkina Faso, Colombia, Indonesia, Malawi, Peru, the Philippines, Rwanda and Slovakia. The Ombudsman institutions of Bolivia, Colombia and Peru and the national human rights institutions of Indonesia and the Philippines were re-accredited with A status. The accreditation decision for the Human Rights Commission of Malawi was deferred to the next meeting. The accreditation of the national human rights institutions of Burkina Faso and Slovakia has lapsed. The Subcommittee recommended that the National Human Rights Commission of Rwanda be downgraded to B status; it has been given the opportunity to provide in writing, within one year, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The Human Rights Commissioner of Azerbaijan was re-accredited A status, following a special review of its accreditation status.

2. Twenty-fifth annual meeting

72. In its capacity as secretariat of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, OHCHR provided support to and facilitated the twenty-fifth Annual Meeting of the Committee, held in Geneva from 20 to 22 March 2012.

73. The meeting was attended by representatives of Ombudsman and national human rights institutions, as well as by international associations, such as the Association francophone des commissions nationales de promotion et de protection des droits de l'homme, the Commonwealth Association of National Human Rights Institutions, intergovernmental organizations and non-governmental organizations.

74. At its twenty-fifth Annual Meeting, the International Coordinating Committee considered the following thematic priorities: (a) indigenous peoples' rights; (b) transitional justice; (c) strengthening human rights monitoring at the national level; (d) follow-up to the universal periodic review; and (e) environment and the right to development (see A/HRC/20/9, para. 63).

3. Bureau meeting

75. OHCHR provided secretarial and technical support to the meeting of the Bureau of the International Coordinating Committee, held in Geneva on 19 and 20 March 2012. Bureau members discussed strategic priorities, including the International Coordinating Committee's engagement with Ombudsman institutions. It also identified, as a priority, engagement with all United Nations human rights mechanisms, including the Commission on the Status of Women, the Permanent Forum on the Rights of Indigenous Peoples, the Open-ended Working Group on

[1] A chart showing the status of national human rights institutions is available from http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf.

Ageing, and the Conference of States Parties to the Convention on the Rights of Persons with Disabilities.

III. Cooperation among United Nations human rights mechanisms and Ombudsman, mediator and other national human rights institutions

A. Human Rights Council

76. In 2011, an average of 21 national human rights institutions, including Ombudsman institutions, participated in each of the Human Rights Council sessions (see A/HRC/20/9, para. 69).

77. During the nineteenth and twentieth sessions of the Human Rights Council, national human rights institutions, including Ombudsmen, were active before and during the sessions, presenting statements, submitting written documentation and participating in general debates.

78. At its nineteenth session, the Human Rights Council adopted decision 19/119, which gives the opportunity to national human rights institutions accredited with A status by the International Coordinating Committee to participate in Human Rights Council sessions through video messaging. In this regard, during the nineteenth session, the Ombudsmen from Georgia and Timor-Leste and the South African Human Rights Commission made video statements following the presentation of the reports by the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention, and the Special Rapporteur on the right to food. At the twentieth session of the Human Rights Council, the Ombudsmen of Serbia and Timor-Leste made video statements following the presentation of the country mission report of the Special Rapporteur on extreme poverty and human rights and during the general debate on the follow-up and implementation of the Vienna Declaration and Programme of Action.

1. Universal periodic review

79. In 2011, 49 States were reviewed under the universal periodic review, for which 18 national human rights institutions, including Ombudsmen, submitted information for the stakeholders' report.[2] Upon request, OHCHR assisted the institutions of Nepal, Sierra Leone, Timor-Leste and the United Republic of Tanzania in submitting information for the review and participating in the relevant sessions of the Council.

80. During the thirteenth Working Group session of the universal periodic review, 14 States were reviewed. The national human rights institutions from Ecuador, Finland, India, Indonesia, Morocco, the Netherlands, the Philippines, South Africa, Tunisia and the United Kingdom and the Ombudsman from Algeria submitted information for the stakeholders' report.

[2] The national human rights institutions of Austria, Australia, Denmark, Georgia, Greece, Ireland, Namibia, Nepal, Paraguay, the Republic of Moldova, Sierra Leone, Thailand, Timor-Leste, Togo, Sierra Leone, Uganda, the United Republic of Tanzania, Venezuela (Bolivarian Republic of) and Zimbabwe.

2. Special procedures

81. The national human rights institutions from Scotland and South Africa, together with the representative of the International Coordinating Committee in Geneva, participated in the first meeting for an exchange of views between special procedures mandate holders and national human rights institutions, held on 14 June 2012 in Geneva. At the meeting, it was recommended that methodologies and tools for cooperation between special procedures mandate holders and national human rights institutions be developed, including mutual follow-up to recommendations.

B. Treaty bodies

82. OHCHR continued to support the participation of national human rights institutions, including Ombudsman institutions, in meetings of treaty bodies. OHCHR provides written and oral briefings to treaty bodies on the status of national human rights institutions in the countries they consider, and regularly updates a compilation of all concluding observations and recommendations of treaty bodies on national human rights institutions.[3]

C. Commission on the Status of Women

83. The national human rights institutions of Australia, Jordan, Mexico, Morocco, Qatar and the Republic of Korea attended the fifty-sixth session of the Commission on the Status of Women, held in New York from 27 February to 9 March 2012. The national human rights institutions continue to advocate for their independent participation in this global policymaking body.

IV. Cooperation among the Office of the United Nations High Commissioner for Human Rights, United Nations agencies and programmes and international and regional organizations of Ombudsman, mediator and other national human rights institutions

A. United Nations Development Programme

84. Engagement with national human rights institutions is a priority area for OHCHR and UNDP, which have both been increasingly involved in the establishment and strengthening of such institutions. UNDP is supporting national human rights institutions, including Ombudsman institutions, in over 90 States through various systematic and institutionalized capacity-development initiatives that aim at creating an enabling environment for national human rights institutions to fulfil their functions, including through identifying human rights and development trends and synergies.

85. The second annual strategic partnership review of UNDP, OHCHR and the International Coordinating Committee was held on 9 July 2012 in New York. During

[3] Available from http://nhri.ohchr.org.

the meeting it was emphasized that one of the objectives of the partnership was to strengthen and support regional networks through joint capacity-building activities. UNDP also highlighted that strengthening the institutional capacity of national human rights institutions through capacity assessment remains a priority for the Programme.

B. Arab-European Human Rights Dialogue

86. In May 2011, OHCHR participated in the sixth High-level meeting of the Arab-European Human Rights Dialogue organized by the German Institute for Human Rights and the Federal Ministry of Foreign Affairs of Germany in Berlin. A declaration was adopted at the end of the meeting that emphasized the critical role that national human rights institutions play in combating torture and ensuring the rule of law.

C. International Ombudsman Institute

87. As part of the cooperation among the International Ombudsman Institute, OHCHR and the International Coordinating Committee, the Secretary-General of the International Ombudsman Institute participated at the twenty-fourth Annual Meeting of the International Coordinating Committee in May 2011 and emphasized the role that Ombudsman institutions can play in monitoring the implementation of the recommendations of the universal periodic review.

D. Ibero-American Federation of the Ombudsman

88. In June 2011, OHCHR participated in the annual meeting of the Ibero-American Federation of the Ombudsman in Alcala de Henares, Spain. Ombudsman institutions from Latin America, Spain and Portugal attending the meeting discussed current and future challenges for Ombudsmen in promoting and protecting human rights; the Millennium Development Goals and Ombudsmen; and the role of Ombudsmen in the implementation of economic, social and cultural rights. The discussions and outcomes of the conference were compiled in a publication, which will be distributed among participants.

E. Commonwealth Forum of National Human Rights Institutions

89. In March 2011, OHCHR, in cooperation with the Commonwealth Secretariat, organized a regional workshop for the Caribbean region on the establishment of national human rights institutions in accordance with the Paris Principles. The workshop took place in Port of Spain and aimed at promoting the establishment and/or the strengthening of national human rights institutions. Parliamentarians, Ombudsman institutions and Government officials, including attorney generals from 12 English-speaking Caribbean States, attended the workshop (see A/66/274, para. 48).

V. Support provided by the Office of the United Nations High Commissioner for Human Rights for Ombudsman, mediator and other national human rights institutions on thematic issues

90. In February 2012, OHCHR, in collaboration with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the National Assembly of Serbia and the Protector of Citizens of Serbia, with the support of the United Nations country team, organized an international expert seminar in Belgrade on the relationship between national human rights institutions and parliaments. The seminar brought together representatives of national human rights institutions, including Ombudsmen, parliaments and scholars from all over the world to discuss ways to strengthen cooperation between national human rights institutions and parliaments. The participants adopted the Belgrade principles on the relationship between national human rights institutions and parliaments, which underline the need to identify areas for strengthened interaction between national human rights institutions and parliaments, bearing in mind that the different models of national human rights institutions, including Ombudsmen, should be respected (see A/HRC/20/9, para. 67 and annex).

91. In 2011, OHCHR undertook a study on the functioning of national and subnational human rights institutions in federal States, including their structures, appointment and selection procedures for members, information and knowledge management, case handling, relationships with federal and local authorities, and funding mechanisms, as well as territorial coverage of their working methods. The study, which will be published in 2012, will provide an opportunity for cooperation between OHCHR and other United Nations agencies, particularly when providing assistance to the establishment and strengthening of national human rights institutions in federal States.

VI. Conclusions

92. **When in compliance with the Paris Principles, Ombudsman, mediator and other national human rights institutions play an important role in ensuring Government accountability and strengthening the rule of law. They can also ensure the effective implementation of the State's obligations under international human rights law by providing advice to the Government, parliament and any other competent body on bringing national legislation, practices and policies in line with international human rights norms and principles.**

93. **Cooperation among regional and international associations of Ombudsmen, mediators and other national human rights institutions, including the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, and the United Nations human rights mechanisms, enhances the sharing of best practices, with the result that current human rights challenges are addressed in a more effective manner and international norms are included in national legislation and practices.**

94. **The growing interest of national human rights institutions, including Ombudsmen, in applying for accreditation to the International Coordinating Committee is welcome. Accredited Ombudsman and national human rights institutions are encouraged to advocate with their Governments for the implementation of the recommendations made by the International Coordinating Committee in order to be in full compliance with the Paris Principles.**

95. **Ombudsman, mediator and other national human rights institutions are encouraged to make use of the standards enumerated in international instruments, in particular the Paris Principles, to support their independence and integrity and increase their capacity to act as promotion and protection mechanisms at the national level. Such institutions should be vested with a broad mandate to protect and promote all human rights.**

96. **The Paris Principles state that national institutions should maintain consultations with other bodies responsible for the promotion and protection of human rights. Therefore, in States where more than one national institution with human rights responsibilities exist, those institutions are encouraged to develop strong cooperation in order to better ensure the realization of human rights at the national level.**

97. **Ombudsman, mediator and other national human rights institutions are encouraged to engage with all United Nations human rights mechanisms, in particular the human rights treaty bodies and the Human Rights Council, including in special procedures and the universal periodic review, and to engage with regional human rights mechanisms.**

98. **Parliaments have an important role to play in promoting and protecting human rights. In particular, a constructive relationship between independent national human rights institutions, including Ombudsmen, and parliaments can make an invaluable contribution to the promotion and protection of human rights at the national level. In this regard, the adoption of the Belgrade principles on the relationship between national human rights institutions and parliaments is welcomed, and the dissemination and implementation of these principles is encouraged.**

99. **Independence and autonomy are fundamental requirements in order for national human rights institutions to be legitimate and credible. States are encouraged to create an enabling environment for national human rights institutions to discharge their mandates effectively and independently without fear or intimidation. States are therefore urged to grant immunity to members of national human rights institutions for actions taken in their official capacity and to ensure that such immunity is respected.**

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Item 70 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of and assistance to internally displaced persons

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly, in accordance with resolution 66/165, the report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani.

* A/67/150.

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Summary

The report outlines the major activities undertaken by the mandate during the period from August 2011 to July 2012. It also provides a thematic review of the evolution of, and achievements and new challenges and trends relating to, internal displacement over the past two decades, a theme which marks the occasion of the twentieth anniversary of the mandate on the human rights of internally displaced persons.

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I. Introduction

1. The present report provides an overview of the main activities undertaken by the Special Rapporteur on the human rights of internally displaced persons during the period between August 2011 and July 2012. The report also contains a thematic section on the evolution of, and challenges and trends relating to, internal displacement over the past two decades, a theme intended to provide an opportunity for reflection in the context of the twentieth anniversary of the mandate and the ongoing challenges and changing realities of internal displacement.

II. Mandate and activities of the Special Rapporteur

A. Mandate of the Special Rapporteur

2. The Human Rights Council, in its resolutions 6/32 and 14/6, mandated the Special Rapporteur with the task of addressing the complex problem of internal displacement, in particular by mainstreaming the human rights of internally displaced persons into all relevant parts of the United Nations system, working towards strengthening the international response to the complex problem of internal displacement, engaging in coordinated international advocacy and action for improving the protection and respect of the human rights of internally displaced persons, and enhancing dialogue with Governments, non-governmental organizations and other relevant actors.

3. In accordance with his mandate, the Special Rapporteur has endeavoured to promote a rights-based approach to internal displacement through dialogue with Governments, as well as through his mainstreaming and advocacy activities within the United Nations and regional organizations. He would like to express his appreciation to those Governments which have issued invitations or otherwise engaged with the mandate, and to the various United Nations and other international organizations which have provided their support to his mandate activities.

B. Country engagement

Kenya

4. The Special Rapporteur carried out an official visit to Kenya from 18 to 27 September 2011 in order to study the current situation of internally displaced persons in the country, including those displaced as a result of the 2007/08 post-election violence and other causes, such as natural disasters and environmental conservation projects (see A/HRC/19/54/Add.2). He found that the Government of Kenya had taken a number of significant steps to address internal displacement in the country, including by developing a draft policy and a bill on internally displaced persons, and assisting in the return and resettlement of some displaced persons affected by the post-election violence, which had resulted in the displacement of over 650,000 persons. In view of the repeated waves and multiple causes of internal displacement in the recent history of Kenya, however, the Special Rapporteur believes that a comprehensive strategy is necessary in order to prevent forced internal displacement in the future and to provide effective assistance, protection and durable solutions to displacement-affected communities.

5. On the basis of his field visits to sites of displacement, he found that there was an urgent humanitarian need to address the current living conditions and human rights of many internally displaced persons, including persons displaced by the 2007/08 post-election violence, and the Mau Forest evictees. The Special Rapporteur also found that the lack of accurate and efficient systems of registration and disaggregated data collection had resulted in a situation where many internally displaced persons were not included in assistance, protection and durable solutions programmes. In view of his findings, he recommended that the authorities review those systems in order to assist internally displaced persons still in need; develop a more comprehensive data collection system, inclusive of all categories of internally displaced persons; set in place a legal and policy framework on internally displaced persons, and ratify the African Union Convention for the Protection and Assistance of Internally Displaced Persons; and adopt a broad approach to durable solutions and ensure that returns are safe, voluntary and informed. He highlighted that assisting internally displaced persons in achieving durable solutions is an important step towards reconciliation and peace in Kenya.

Afghanistan

6. From 12 to 16 July 2012, at the invitation of the Government of Afghanistan, the Special Rapporteur held dialogue sessions with Government officials and participated in a national consultative workshop on the development of a national policy on internal displacement, organized on 15 and 16 July in Kabul. The workshop, which was led by the Ministry of Refugees and Repatriation with the support of civil society and the United Nations, was aimed at establishing a road map for key stages in the development of a policy on internal displacement. The Special Rapporteur congratulates the Government of Afghanistan on this important initiative and wishes to express his commitment to continuing to provide his assistance in this regard.

Côte d'Ivoire

7. From 23 to 31 July 2012, the Special Rapporteur conducted an official visit to Côte d'Ivoire at the invitation of the Government. He commends the Government for the work that has been done towards re-establishing law and order in the country. In cooperation with the international community, it has also largely ensured that returns of internally displaced persons, estimated at 1 million at the height of the post-election crisis in March 2011, have been voluntary.

8. He noted, however, that there was a need to address the continued human rights, assistance and protection needs of internally displaced persons in Côte d'Ivoire, many of whom still lack durable solutions, livelihood opportunities and confidence in the security sector. It is critical that displacement-affected and receiving communities be supported in their efforts to assist internally displaced persons and that the internally displaced themselves be adequately assisted in rebuilding their lives and participating in the reconciliation process. The ongoing security sector reforms, the disarmament, demobilization and reintegration process, and measures to strengthen the rule of law must also be fully set in place in order to ensure the durability of returns, restore confidence in security structures and stem human rights violations. Those reforms, which are necessary to consolidate peace, should be based on a principled and transparent approach and give due consideration to issues and concerns relating to internally displaced persons. Addressing other challenges,

such as those relating to land reforms and personal identity documents, i.e., birth registrations, is also essential in order to deal with the underlying causes of displacement and provide effective human rights protection for all.

9. Since assuming his mandate, the Special Rapporteur has made requests to visit the following countries: Bangladesh, Colombia, Haiti, Myanmar, Pakistan, Papua New Guinea, the Philippines, Serbia, South Sudan, the Sudan and the Syrian Arab Republic. He thanks the Governments of Haiti and the Sudan for their positive reply to his requests.

C. Cooperation with regional, international and civil society organizations

10. The Special Rapporteur is pleased to report on his ongoing collaboration with regional and international organizations, such as African regional organizations and mechanisms, and the International Organization for Migration (IOM). Among others, he has engaged closely with regional organizations in Africa for the promotion, ratification and implementation at the national level of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, the first legally binding regional instrument specifically relating to the protection of and assistance to internally displaced persons. To that end, he participated in a number of events, including the Summit of Heads of State of the International Conference on the Great Lakes Region, held from 14 to 16 December 2011 in Kampala, and the 126th session of the Inter-Parliamentary Union Assembly, held from 30 March to 5 April 2012, also in Kampala.

11. In addition to regular dialogue sessions, the Special Rapporteur participated in a number of events on internal displacement, such as a panel discussion on displacement induced by natural disasters, organized by IOM on 20 July 2012 in New York, and provided briefings to groups such as the Humanitarian Liaison Working Group on his mandate priorities and country visits, on 19 October 2011.

12. The Special Rapporteur has maintained strong contacts with civil society organizations, in Geneva, in New York and in the field. In particular, he wishes to express his appreciation for the support provided to his mandate through the Brookings-London School of Economics Project on Internal Displacement (Brookings-LSE project). He also wishes to express his appreciation for the cooperation of the Internal Displacement Monitoring Centre on various issues of mutual interest. In the field, civil society organizations play a vital role in supporting the mandate by sharing information, articulating the human rights impact of internal displacement in various contexts and acting as a liaison with displaced communities. From 18 to 23 June 2012, the Special Rapporteur participated in San Remo, Italy, in the eighth annual course on the law of internal displacement, co-organized and supported by the Brookings-LSE project, the International Institute of Humanitarian Law, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). Among the participants in the course were 23 Government officials from 13 displacement-affected countries. In this context, the Special Rapporteur is pleased to announce the establishment of a new week-long annual San Remo Seminar on International Law and Legal Protection in Natural Disasters, intended for practitioners and lawmakers. The first seminar will be held from 3 to 7 December 2012.

13. The Special Rapporteur participated in a number of other forums and events on internal displacement organized by civil society and other relevant actors, including panel discussions on climate change adaptation (7 October 2011), the role of women in conflict situations (2 May 2012) and transitional justice and displacement (28 June 2012), held in Washington, D.C., and Geneva, and organized by the Brookings-LSE project; and a roundtable discussion on current priorities and challenges on internal displacement (23 March 2012), hosted by the United States Agency for International Development (USAID) in Washington, D.C.

D. Mainstreaming the human rights of internally displaced persons in the United Nations system

14. During the reporting period, the Special Rapporteur participated in the Inter-Agency Standing Committee, the key platform for mainstreaming the human rights of internally displaced persons within the United Nations system and the wider humanitarian community. He also maintained close cooperation with key United Nations entities, including OHCHR, UNHCR and the Office for the Coordination of Humanitarian Affairs. He engaged with them through dialogue sessions on current challenges and responses to situations of internal displacement, occasional exchanges of information and briefings, and discussions on potential areas of cooperation, both at the headquarters and the field levels. The mandate also participated in a number of activities organized by those bodies, including the regular meetings and annual retreat of the Global Protection Cluster; activities for the promotion of the Kampala Convention; and events such as a seminar on the theme "Addressing the adverse impacts of climate change on the full enjoyment of human rights", organized by OHCHR on 23 and 24 February 2012 in Geneva, and the Regional Consultation for South and Eastern Europe and Central Asia on Women in Conflict and Post-conflict Situations, organized by the Committee on the Elimination of Discrimination against Women on 11 May 2012 in Turkey.

15. To mark its twentieth anniversary, the mandate, in conjunction with relevant partners and sponsors, organized a series of events, including a panel discussion on the theme "Influencing our common future: the role of internally displaced women in recovery, peacebuilding and durable solutions" (7 March 2012) and a side event at the Human Rights Council on internally displaced persons living outside camps (29 June 2012), both held in Geneva.

III. Thematic section: evolution, challenges and trends in internal displacement

A. Introduction

16. In 2012, the mandate on the human rights of internally displaced persons, established pursuant to Commission on Human Rights resolution 1992/73, celebrates its twentieth anniversary. To mark this occasion, the present thematic section of the report provides an overview of the evolution of, and the achievements, challenges and trends relating to, internal displacement over the past two decades; a theme intended to provide an opportunity for reflection on key milestones, and for engaging in forward thinking as both new and long-standing

displacement challenges continue to be addressed. Born from a recognized need to address the phenomenon of internal displacement, this mandate, the Guiding Principles on Internal Displacement, which it developed, and the efforts to strengthen the humanitarian response system since the 1990s continue to be as relevant as ever.

B. Current internal displacement: figures and causes

17. According to recent estimates, at the end of 2011 the number of persons internally displaced owing to armed conflict, generalized violence or human rights violations stood at 26.4 million.[1] This figure included new large-scale displacements in several regions, including in Africa and the Middle East.[2] Protracted displacement, including long-standing situations in which one or more generations have grown up in displacement, were also a key feature of displacement trends in 2011, affecting an estimated 40 countries.[3] The current figure of nearly 27 million internally displaced persons worldwide reflects a steady increase over the past 15 years due to new displacements but also to unresolved protracted displacement situations and ongoing internal conflicts. In the late 1990s this figure was less than 20 million.[4]

18. As highlighted by the Special Rapporteur in his report to the General Assembly in 2011 (A/66/285), natural hazards, the majority of which are due to climate-related disasters, represent an increasingly important cause of internal displacement worldwide. In 2011, at least 61 countries were affected and a total of nearly 15 million persons were newly displaced owing to either a severe threat or the impact of disasters related to sudden onset natural hazards, the most severe effects of which were felt in Asia.[5]

19. The majority of such displacements over the past four years have been due to a small number of large and megadisasters. Although megadisasters are relatively rare they have a great impact on internal displacement figures.[6] In terms of the number of internally displaced persons, in 2011 the top 10 disasters continued to be in Asia, including multiple events in China, the Philippines, Sri Lanka and Japan.[7] In contrast to the visibility of large and megadisasters, many smaller disasters go relatively underreported. Yet, their impact on low-income households and communities, especially if they are recurrent, has the effect of undermining resilience and aggravating vulnerabilities or creating new ones. As such, they are an issue deserving of further attention by humanitarian and development actors alike.[8]

20. Although significant data and research exist with regard to displacement due to sudden onset hazards, slow onset natural hazards and disasters, for example drought and desertification, and their impact on internal displacement are a feature of climate change which is less understood and on which far fewer data are readily

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[1] Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (NRC), "Global Overview 2011: people internally displaced by conflict and violence", April 2012, p. 13.

[2] Ibid., pp. 13-14.

[3] Ibid., p. 14.

[4] Ibid., p. 13.

[5] IDMC and NRC, "Global estimates 2011: people displaced by natural hazard-induced disasters", June 2012, pp. 4-5.

[6] Megadisasters are defined as "events which displace more than a million people"; ibid., p. 4.

[7] Ibid.

[8] Ibid., p. 5.

available. It is essential that work continue to be undertaken in this area in order to improve the monitoring of displacement patterns, the availability and quality of data collection, and appropriate prevention and response systems.

C. Historical evolution: articulating human rights specific to the needs of internally displaced persons

21. The recognition of the need to address internal displacement and to develop international standards for internally displaced persons first came to the fore in the 1990s. While in 1982 only 1.2 million people were estimated forcibly displaced in 11 countries, by 1995 this figure had peaked to an estimated 20 million to 25 million in over 40 countries, largely owing to a proliferation of civil wars, ethnic strife and human rights abuses.[9] Uprooted but remaining within the borders of their own countries, the 1951 Convention Relating to the Status of Refugees did not apply to them, and no international system existed to assist them or to guide States. The end of the Cold War was a further factor highlighting the situation of internally displaced persons. Cross-border movements became easier, existing notions of sovereignty were changing and the need to provide protection and assistance to internally displaced persons confined within the borders of their own countries was increasingly recognized.[10] The lack of clear standards for the protection and assistance of internally displaced persons was a glaring problem, however, and it became evident that there was a need for normative guidance to define internally displaced persons and their specific rights, and for an institutional response to their needs that was timely, predictable and comprehensive.

22. In 1992, the United Nations Secretary-General noted that indeed there was no clear statement of the human rights of internally displaced persons and that international law in that regard consisted in a patchwork of customary and conventional standards (E/CN.4/1992/23, para. 103). He called for the elaboration of guidelines that would clarify the implications of existing human rights law for persons who were internally displaced, and fashion from existing standards one comprehensive, universally applicable body of principles which addressed the main needs and problems of such persons (ibid., para. 104).

23. This call was in large part due to the efforts of a group of non-governmental organizations, which in 1990 undertook a joint campaign to highlight the gaps in the international system with respect to internally displaced persons and to advocate for the development of relevant international standards and the appointment of a United Nations representative on internally displaced persons.[11] In 1992, the then Commission on Human Rights adopted resolution 1992/73, in which it called upon the Secretary-General to appoint a representative on internally displaced persons, who was tasked as one of his first activities to examine the applicability of international human rights and humanitarian and refugee law to the protection of internally displaced persons. Francis Deng, a scholar and diplomat from the Sudan, was appointed Special Representative and, together with a team of international

[9] Roberta Cohen, "The Guiding Principles on Internal Displacement: an innovation in international standard setting", p. 460, in *Global Governance*, 10 (2004), pp. 259-480.

[10] Ibid., p. 461.

[11] Roberta Cohen, "The Guiding Principles", p. 462.

legal experts and institutions, set out to fulfil this mandate, including through extensive consultations over several years.

24. When seeking to identify specific rights for internally displaced persons, based on the particular needs of this category of persons, the Special Representative and the legal team found that some grey areas and gaps existed. They concluded that, while improving protection for internally displaced persons would indeed require a restatement of the law that rendered it more relevant to their specific needs and addressed the existing gaps, this could be achieved through a compilation and adaptation of existing international law to the needs of internally displaced persons, thus rendering it unnecessary to create new law. This manner of working within existing law that had already been agreed upon by States, and formulating guidance for its specific application to internally displaced persons, was an innovative and key feature of the Guiding Principles.[12] The fact that they were based on and reflected existing international human rights and humanitarian law, and by analogy, international refugee law, strengthened their standing and acceptance by States.

25. The Guiding Principles on Internal Displacement were drafted and subject to a broad-based consultation process from 1996 to 1998, and finalized at a conference of 50 international experts in Vienna, hosted by the Government of Austria. In 1998, the Special Representative presented the outcome of this work to the Human Rights Commission, which unanimously adopted resolution 1998/50, in which it took note of the Guiding Principles and of the Special Representative's stated intention to use them in his ongoing dialogue with Governments and other relevant actors. An annotated version of the Guiding Principles published in 2000 further improved understanding of their legal foundations by detailing the provisions in hard law on which each of the Guiding Principles is based.[13]

D. Trigger of a United Nations humanitarian system-wide review

26. Faced with the dimensions of the issue of internally displaced persons and the lack of defined institutional or operational frameworks to address it, the international community called not only for the development of normative standards on internally displaced persons but also for a review of the capacity and coordination arrangements within the United Nations system for humanitarian assistance.

27. In 1990, in its resolution 1990/78, the Economic and Social Council requested the Secretary-General to initiate a United Nations system-wide review to assess the experience and capacity of various organizations in the coordination of assistance to all refugees, displaced persons and returnees and to recommend ways of maximizing cooperation and coordination among the various organizations of the United Nations system in order to ensure an effective response to the problems of those populations. In its resolution 1991/25, the then Commission on Human Rights also specifically requested the Secretary-General to take into account the protection of the human rights of internally displaced persons in the system-wide review and submit to the Commission an analytical report on internally displaced persons.

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[12] Ibid., p. 464.

[13] Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy, No. 38, American Society of International Law and Brookings Institution (Washington, D.C., 2008).

28. Following the Secretary-General's report on the system-wide review (E/CN.4/1992/23), a number of significant measures were taken to strengthen the coordination of humanitarian emergency assistance of the United Nations, including the designation of an emergency relief coordinator and the establishment of the Inter-Agency Standing Committee, to be chaired by the Emergency Relief Coordinator (see General Assembly resolution 46/182, annex, paras. 34 and 38). The Inter-Agency Standing Committee includes all United Nations operational agencies, this mandate, intergovernmental organizations, such as the International Committee of the Red Cross (ICRC) and IOM, and non-governmental organizations, either by standing invitation or on an ad hoc basis. The Inter-Agency Standing Committee therefore became the primary mechanism for inter-agency coordination and the development of policy for ensuring a coherent and timely response to humanitarian emergencies (see General Assembly resolution 48/57, para. 6).

29. Subsequently, and as part of the United Nations reform of 1997, the General Assembly explicitly tasked the Emergency Relief Coordinator to take on a central role in the inter-agency coordination of protection and assistance to internally displaced persons (see A/51/950, para. 186). In December 1999, the Inter-Agency Standing Committee adopted the policy paper on the protection of internally displaced persons submitted to it by the Special Representative of the Secretary-General, Francis Deng, thereby representing an acknowledgement by the heads of the various United Nations agencies that the protection of internally displaced persons was "of concern to all humanitarian/development agencies", and establishing the "collaborative approach" as the main vehicle for the inter-agency response to the needs of internally displaced persons.[14]

30. However, a study undertaken a few years later, in 2003, found that while considerable efforts had been made in a number of countries, the United Nations approach to protecting the rights of internally displaced persons continued to be largely ad hoc and suffered from insufficient political and financial support, which had undermined efforts in the field.[15] The General Assembly reiterated the need to further strengthen inter-agency arrangements and the capacities of the United Nations and other relevant actors in order to meet the immense challenges of internal displacement and stressed the importance of an effective, accountable and predictable collaborative approach (resolution 58/177, para. 13). This led to the adoption by the Inter-Agency Standing Committee of a policy which sought to reinforce the collaborative response,[16] but which was subsequently superseded in 2006 by the cluster approach, an arrangement aimed at creating more predictable and accountable leadership in nine sectors of humanitarian response.[17]

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[14] "Protection of internally displaced persons", Inter-Agency Standing Committee Policy Paper Series, No. 2, New York (2000), 2; IASC Policy Package on Implementing the Collaborative Response in Situations of Internal Displacement, September 2004.

[15] Simon Bagshaw and Diane Paul, *Protect or Neglect? Toward a More Effective United Nations Approach to the Protection of Internally Displaced Persons*, Office for the Coordination of Humanitarian Affairs, Inter-agency Internal Displacement Division, and Brookings-SAIA Project on Internal Displacement, November 2004, pp. vi, 3-5.

[16] Inter-Agency Standing Committee, *Implementing the Collaborative Response in Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams*, Inter-Agency Standing Committee, September 2004.

[17] Inter-Agency Standing Committee, "Guidance note on using the cluster approach to strengthen humanitarian response", 24 November 2006.

31. This humanitarian reform process, and the cluster system currently in place, seeks to render the humanitarian response (including in internal displacement situations) more predictable, through a system by which different organizations assume lead responsibility for specific sectors of the response. The system has introduced significant improvements with regard to predictability, clearer lines of responsibility and improved coordination. It has also raised a number of challenges, including the challenge of coordination between a large number of diverse actors with different organizational mandates, tools and approaches. The ongoing work being done to streamline some of those approaches and tools, to enhance coordination and information sharing systems, and to learn from the ongoing evaluation of the work of cluster teams in various parts of the world, and the wider efforts to strengthen humanitarian system structures (such as through the current "transformative agenda"), are essential to the evolution of a system challenged not only by its own structural complexities but also by complex and changing humanitarian environments and needs.

32. Spurred in large part by the need to render the response to situations of internal displacement more consistent, systemic and predictable, the humanitarian reform agenda has had much wider implications and benefits for the humanitarian sector more generally. Even as the humanitarian system reform agenda has widened, it remains important that the specificities of situations of internal displacement and the rights of internally displaced persons not be lost, and that the Inter-Agency Standing Committee and the Emergency Relief Coordinator continue to seek positive advancements with regard to approaches, guidance and structures to respond to the particular needs of the internally displaced. Far from constituting a form of discrimination vis-à-vis other groups, addressing the particular needs and rights of internally displaced persons allows for the articulation of specific prevention and preparedness measures and the provision of tailored assistance, protection and durable solutions to displacement which support States and affected communities more effectively, thereby increasing compliance with international human rights norms and promoting inclusion, stability and security.

E. Second wave of advancements in the field of internal displacement: acceptance and use of the Guiding Principles

33. The development of the Guiding Principles was an essential first step in establishing a normative framework providing international minimum standards for the treatment of internally displaced persons. A second wave of normative and operational advances which would translate the Guiding Principles into concrete programmes and legal and policy frameworks on the ground would eventually become possible thanks to the broad-based acceptance and growing authority of the Guiding Principles.

34. At the global level, the Heads of State and Government assembled in New York for the 2005 World Summit unanimously recognized the Guiding Principles as an important international framework for the protection of internally displaced persons (General Assembly resolution 60/1, para. 132), a recognition subsequently echoed by the Human Rights Council in its resolutions 6/32 and 20/9, and the General Assembly in resolution 66/125. The General Assembly further welcomed the fact that an increasing number of States, United Nations agencies and regional and non-governmental organizations were applying them as a standard, and

encouraged all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement (resolution 62/152, para. 10). In addition, it has also recognized that the protection of internally displaced persons has been strengthened by identifying, reaffirming and consolidating specific standards for their protection, in particular through the Guiding Principles on Internal Displacement (resolution 66/165, tenth preambular paragraph).

35. The 2005 ICRC study on customary international humanitarian law, conducted on the basis of a request by States and Red Cross and Red Crescent Societies, recognized the role of the Guiding Principles as a source of customary law.[18] Based on State practices, the study developed rules applicable to internally displaced persons. These rules make explicit reference to the Guiding Principles.

Regional developments

36. Over the course of the past 20 years, regional and subregional intergovernmental organizations have increasingly acknowledged, relied on or even adopted the Guiding Principles. They include the African Union, the International Conference on the Great Lakes Region, the Economic Community of West African States, the Inter-American Commission on Human Rights of the Organization of American States, the Organization for Security and Cooperation in Europe and the Council of Europe.[19]

37. In 2006, however, the Guiding Principles would assume a new legal stature in the context of Africa, when member States of the International Conference on the Great Lakes Region established a legal framework for the formal legal adoption and implementation of the Guiding Principles. As part of the Conference process, 11 States of the Great Lakes region of Africa adopted in 2006 a binding Pact on Security, Stability and Development in the Great Lakes Region,[20] with 10 separate protocols, including two which recognize the importance of the Guiding Principles on Internal Displacement, namely the Protocol on the Protection and Assistance to Internally Displaced Persons and the Protocol on the Property Rights of Returning Persons. The Protocol on Internally Displaced Persons, which entered into force in June 2008, obliges member States of the International Conference on the Great Lakes Region to enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems (art. 6.3) and to ensure the effective participation of internally displaced persons in developing such legislation (art. 6.5).

38. The Protocol on Internally Displaced Persons served as an impetus for the African Union to draft the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention).[21] A

[18] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, vols. I and II, International Committee of the Red Cross and Cambridge University Press (2006); www.icrc.org/customary-ihl/eng/docs/home. See vol. I, "Rules", chap. 38.

[19] See www.brookings.edu/about/projects/idp/laws-and-policies/regional-policies.

[20] Chaloka Beyani, "Introductory note to the Pact on Security, Stability and Development in the Great Lakes Region", in *International Legal Materials*, 46 (1), 2007, pp. 173-175, American Society of International Law.

[21] Chaloka Beyani, "Recent developments: the elaboration of a legal framework for the protection of internally displaced persons in Africa", *Journal of African Law*, 50 (2), 2006, Cambridge, pp. 187-197.

watershed in international law for the protection of internally displaced persons, the Kampala Convention was adopted by the African Union at its first ever Special Summit on Refugees, Returnees and Internally Displaced Persons, held in Kampala in October 2009. Developed over a five-year period, a process to which this mandate contributed at the request of the African Union, the Kampala Convention incorporates the Guiding Principles and sets out obligations for States parties, the African Union and humanitarian agencies in relation to all phases of displacement.

39. The Kampala Convention represents a pioneering instrument in several respects. It recognizes a range of causes of internal displacement for which States parties are obliged to protect and assist internally displaced persons, including, most notably, climate change and development projects.[22] It specifically requires national authorities to take a number of specific measures, such as developing appropriate institutional mechanisms, policies, strategies and legislation, and identifying funds for protection and assistance activities. In addition to stipulating the obligations of States parties, the Convention also outlines responsibilities of non-State actors and armed groups with regard to protection and assistance to internally displaced persons in areas under their control. The Special Rapporteur is pleased to note that, as of 19 July 2012, the Convention had been signed by 38 member States, and ratified by 14 member States, 13 of which had already deposited their ratifications.[23] It is encouraging to see the member States of the African Union recognize their responsibilities to protect and assist those affected by developing the first legally binding instrument specific to internal displacement.

40. In other regions of the world, States have also committed themselves to adhering to the Guiding Principles and incorporating them in their domestic legal frameworks in non-binding regional instruments. For example, Organization of American States resolution 2667 of 2011 is notable in this respect, as is recommendation Rec (2006)6 of the Council of Europe.

41. We have also seen the development of jurisprudence by regional courts, which has strengthened the normative authority of the Guiding Principles and State responsibilities vis-à-vis internally displaced persons. For example, the African Commission on Human and Peoples' Rights has adopted landmark decisions regarding the rights and freedoms of internally displaced persons and related State responsibilities, such as in the *Endorois* case and the *Malawi Association* case.[24] The Inter-American Court of Human Rights, in the *"Mapiripan Massacre" v. Colombia* case, upheld the legal responsibility of the State for displacement caused by paramilitary groups or armed groups, on the basis of their failure to act promptly to prevent the displacement in the first place and to create the conditions allowing internally displaced persons to return home in safety.[25] The European Court of Human Rights has also addressed issues pertaining to the rights of internally displaced persons, including return, housing and property rights.[26] In some of these instances, the Guiding Principles have been referred to or used by courts in their

[22] See articles 1.k, 4.4, 5.4 and 10 of the Kampala Convention.

[23] The Convention requires 15 ratifications in order to become binding.

[24] See *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, Communication 276/2003; and *Malawi Association and Others v. Mauritania*, Communication 54/91.

[25] *"Mapiripan Massacre" v. Colombia*, Judgment, 15 September 2005.

[26] For example, European Court of Human Rights, *Soltanov and Others v. Azerbaijan*, Judgment, 13 January 2011; and *Isayeva v. Russia*, Judgment, 24 February 2005.

assessment.[27] Those decisions demonstrate not only the engagement of human rights protection mechanisms in various regions of the world but also the variety of contexts in which the need for protection of internally displaced persons and State responsibilities arise.[28]

National frameworks on internal displacement

42. In recognition of the primary responsibility of the State for protection and assistance to internally displaced persons, the General Assembly, the Human Rights Council and its predecessor, the Commission on Human Rights, have over the years repeatedly encouraged Governments to develop domestic legal and policy frameworks based on the Guiding Principles.[29] It is estimated that, at present, over 20 countries have adopted or issued policies, laws or decrees relating specifically to internal displacement.[30] A number of other countries, including Afghanistan, the Central African Republic, Kenya, Nigeria and Yemen, are currently in the process of developing, or have already announced, draft national policies or legislation, a process which this mandate has routinely supported. Of note also is the adoption of the first state- or provincial-level law on internally displaced persons, in Mexico, where the State of Chiapas adopted a law on displacement in February 2012 which incorporates the Guiding Principles.

43. While those laws and policies mark positive developments, many domestic frameworks adopted to date vary in their scope, guarantees of protection and assistance to internally displaced persons, and coverage of relevant issues. Not all of the laws and policies include a definition of an internally displaced person or provide clear institutional responsibilities, and many address only a particular cause or stage of displacement, such as conflict or return, while others focus only on particular rights. Domestic courts have, in some cases, referred to the Guiding Principles to call on Governments to fulfil their responsibilities with regard to internally displaced persons. For example, the Constitutional Court of Colombia ruled that the Guiding Principles must be considered as parameters for the creation and interpretation of norms regulating internal displacement and the attention given by the State to the internally displaced.[31]

44. Other significant activities in support of the development of national internal displacement frameworks, to which this mandate has contributed, include a manual for law and policymakers, published in 2008, which provides guidance to national authorities seeking to develop domestic legislation and policies addressing internal displacement in their countries.[32] An earlier and important publication, *Addressing Internal Displacement: A Framework for National Responsibility*, published in

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[27] European Court of Human Rights: *Doğan and Others v. Turkey*, Judgment (merits), 29 June 2004, para. 154; *Saghinadze and Others v. Georgia*, Application Judgment (merits), 27 May 2010, paras. 70, 115.

[28] Chaloka Beyani, "Recent developments", p. 193.

[29] See, for example, General Assembly resolution 60/168 and Commission on Human Rights resolution 2005/46.

[30] See www.brookings.edu/about/projects/idp/laws-and-policies/idp-policies-index.

[31] Constitutional Court of Colombia, decision No. SU-1150/2000, para. 38; also see decision T-025 of 2004 by the same court.

[32] Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, October 2008.

2005, provides guidance to Governments in relation to their national responsibilities for internally displaced persons, in the form of 12 benchmarks which enable States to prevent, address and provide durable solutions to internal displacement.[33]

45. More recently, a study published in 2011 used the *Framework for National Responsibility* as a basis to examine the manner and extent to which national authorities were addressing internal displacement in 15 of the 20 countries most affected by internal displacement due to conflict, generalized violence and human rights violations.[34] One of the study's main findings was that national human rights institutions can play a pivotal role in improving national responses to internal displacement. In particular, they have played an important role in raising awareness of internal displacement, monitoring displacement situations and returns, investigating individual complaints, advocating for and advising Governments on the drafting of national policies to address internal displacement, and monitoring and reporting on the implementation of national policies and legislation.[35] The Special Rapporteur is pleased that an increasing number of national human rights institutions are integrating internal displacement into their work, and will continue supporting them in this critical role.

Other significant advancements and developments

46. A number of other advances and developments are also worthy of note. Among them is the development of standards, operational guidance and a variety of other tools intended to support relevant actors in addressing various aspects, stages or types of internal displacement. In the context of the cluster approach for example, the Global Protection Cluster Working Group, composed of United Nations agencies and non-governmental and intergovernmental organizations, initiated a process of consultations leading to the publication of *The Handbook for the Protection of Internally Displaced Persons*, which has proven an invaluable tool for humanitarian and protection actors involved in the provision of humanitarian assistance and protection in the field.

47. In the area of durable solutions, the mandate undertook a process of consultations and revisions throughout a number of years, aimed at developing practical guidance on durable solutions to internal displacement. That process culminated in the *Framework on Durable Solutions for Internally Displaced Persons* (the Framework), which was presented to the Human Rights Council in 2010 (A/HRC/13/2, Add.4) and endorsed by the Inter-Agency Standing Committee. The Framework provides guidance to national and local authorities, as well as humanitarian and development actors for achieving durable solutions, and includes rights-based principles to guide action, and indicators to monitor progress, towards durable solutions. The Framework stipulates that a durable solution is achieved when internally displaced persons no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human

[33] Brookings-Bern Project on Internal Displacement, *Addressing Internal Displacement: A Framework for National Responsibility*, April 2005.

[34] Elizabeth Ferris, Erin Mooney and Chareen Stark, *From Responsibility to Response: Assessing National Approaches to Internal Displacement*, Brookings-LSE Project on Internal Displacement, November 2011.

[35] Ibid., p. xiii.

rights without discrimination resulting from their displacement (ibid., para. 8). The Special Rapporteur is also pleased to note the Framework on Ending Displacement in the Aftermath of Conflict, issued by the Secretary-General,[36] which puts forward a United Nations strategy to enhance support for durable solutions for internally displaced persons and refugees returning to their countries of origin in post-conflict contexts. The Special Rapporteur fully endorses that initiative and is committed to providing his support to that process.

48. In 2011, the Special Rapporteur devoted his report to the General Assembly to the topic of climate change and its impact on internal displacement (A/66/285). In that regard, he is pleased to note the important efforts being made by the international, humanitarian and human rights communities to raise awareness and improve responses to internal displacement caused by the effects of both sudden and slow onset climate change.[37] While continued efforts are necessary, coordinated advocacy on this issue resulted, in December 2010, in an important breakthrough, namely the adoption by the Conference of the Parties to the United Nations Framework Convention on Climate Change, during its meeting in Cancun, Mexico, of an adaptation framework which expressly acknowledges climate-induced displacement. The Cancun Agreements call for measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation.[38] It is essential that adaptation frameworks be comprehensive in nature so as to encompass a variety of possible dynamics and responses to internal displacement, for example, disaster risk reduction and prevention, planned and pre-emptive movement, and durable solutions; that they adopt a human rights-based approach; and that they be adequately supported (see A/66/285).

F. Role and impact of the mandate

49. From 1992, when the Secretary-General appointed his first Special Representative on internally displaced persons, to the subsequent appointment of his Representative, Walter Kälin (in 2004) and the appointment by the Human Rights Council in September 2010 of Chaloka Beyani as the Special Rapporteur on the human rights of internally displaced persons, the mandate has successfully built on its partnerships, working methods, thematic expertise and normative standards.

50. Throughout the past 20 years of its existence and the various humanitarian reform initiatives that have taken place, the mandate has maintained a unique position and advocacy function concerning the human rights of internally displaced persons, in a context where there is no lead or single United Nations agency designated to be the voice for the internally displaced or to have an overall mandate for them. It has undertaken advocacy functions at all levels, international, national and regional, including more recently with respect to the ratification of the Kampala

[36] Secretary-General's Policy Committee decision No. 2011/20, "Durable solutions: follow up to the Secretary-General's 2009 report on peacebuilding".

[37] See, for example, document A/HRC/10/61; the Nansen Principles on Climate Change and Displacement, available at www.unhrc.org/4ea969729.pdf; and the work on disaster law done by the International Federation of Red Cross and Red Crescent Societies, details of which are available from www.ifrc.org/en/what-we-do/idrl/research-tools-and-publications.

[38] Framework Convention on Climate Change, Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, Part Two: Action Taken by the Conference of the Parties at its sixteenth session (FCCC/CP/2010/7/Add.1) para. 14 (f).

Convention. Drawing on its legacy of the Guiding Principles, it has worked to give practical effect to them through the development of normative standards and guidance intended to assist Governments and the humanitarian and development communities to operationalize different aspects of the Guiding Principles at different stages of displacement (A/HRC/13/21/Add.4).

51. The mandate has also played an essential role in mainstreaming the human rights of internally displaced persons within the United Nations system. Its participation in the Inter-Agency Standing Committee has been and continues to be a central platform for that mainstreaming role, as it continues to advocate for the integration of issues relating to internal displacement in Inter-Agency Standing Committee policies and operational strategies. Increased understanding and mainstreaming of those issues within the United Nations system has also been made possible through the mandate's partnerships and close engagement with United Nations agencies such as UNHCR, the Office for the Coordination of Humanitarian Affairs and OHCHR, as well as the General Assembly and mechanisms of the Human Rights Council, such as other special procedure mandates and treaty bodies, for example, the Committee on the Elimination of Discrimination against Women and the Human Rights Committee. Through its thematic reports and inputs to those bodies, the mandate has regularly highlighted the specific human rights dimensions of internal displacement and raised new or neglected aspects of the rights of internally displaced persons, such as their participation in peace processes,[39] the impact on their human rights of larger phenomena such as climate change (A/66/285), the protection of persons in situations of natural disasters (A/HRC/16/43/Add.5), and the situation of internally displaced persons outside camps (A/HRC/19/54).

52. Recognizing the primary responsibility of the State for protection and assistance to internally displaced persons, a key focus of the mandate has been to support States in meeting that responsibility. It has done so through country visits and a strong tradition of follow-up visits, as well as other forms of continued practical engagement with States, such as participation in national workshops; the provision of technical guidance and support in the development of national legal and policy frameworks, as in the case of Kenya and Afghanistan more recently; and through training programmes such as the annual San Remo Course on the Law of Internal Displacement.[40] Over the course of its existence, the mandate has visited over 30 countries, many repeatedly through follow-up visits, a key feature of the mandate's working methods intended to promote a process of continued dialogue with and support to States in the implementation of the mandate's recommendations and other initiatives on behalf of internally displaced persons.

53. In addition to the San Remo training programme, other training on internal displacement, including regional training in various parts of the world, in which the mandate participates regularly, have been aimed at enhancing expertise among various actors, including representatives of civil society, United Nations country offices and international organizations. The mandate's continued engagement with civil society groups and with the internally displaced themselves, both at the

[39] United States Institute of Peace and Brookings-Bern Project on Internal Displacement, *Integrating Internal Displacement in Peace Processes and Agreements*, Peacemaker's Toolkit, 2010.

[40] Over the past seven years of its existence, this annual week-long course has provided training to over 190 mid- and high-level Government officials working on internal displacement issues from all over the world.

international level and during country visits, has not only enabled it to better monitor situations of internal displacement across the globe, but also to better understand its root causes and consequences, the specific vulnerabilities of internally displaced persons and the incredible resources that they can bring to their communities and countries.

G. Trends and focus areas

1. Trends

(a) Recognition by individual States of the need to address internal displacement

54. Over the last 20 years, one of the most important trends in the protection of internally displaced persons has been the progressive acceptance by individual States that, under their human rights and international humanitarian law obligations, they bear responsibility for establishing specific protection measures for the internally displaced. The recognition that internal displacement is a problem with far-reaching consequences relating to demographic impact, national budgetary implications and development strategies has in many cases resulted in an increasingly pragmatic approach towards the Guiding Principles, and the adoption of a growing body of legally binding instruments at the national and regional levels by States which see the need for the rational management of internal displacement and for frameworks to regulate their responses. The progressive involvement of regional institutions on the issue, such as the African Union, the Inter-American Court of Human Rights and the European Court of Human Rights, as well as the efforts of international humanitarian, protection and human rights institutions in providing training, advocacy and operational guidance frameworks, for example the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons, have further supported that evolution and States' capacity and efforts.

(b) Megatrends and other factors interacting with internal displacement

55. Megatrends and overriding social or other factors, such as climate change, exert pressures which interact closely with and often exacerbate internal displacement. Those significant global megatrends include population growth, rapid urbanization, increased human mobility, and food, water and energy insecurity. Those megatrends, which themselves are likely to have a negative impact on human rights and potentially cause displacement, are, moreover, predicted to interact with the effects of sudden and slow onset climate change and affect the magnitude and patterns of internal displacement (A/66/285, para. 28). Against this background and related social and political pressures, climate change is predicted to act as an impact multiplier and accelerator of internal displacement, which will be characterized by multiple causalities, including conflicts and insecurity due to competition over resources or loss of livelihoods (ibid., para. 29).

56. While the increased frequency and intensity of sudden onset natural hazards, for example flooding or mudslides, associated with changes in climate are very apparent and are increasingly challenging many Governments, climate change-related adaptation strategies will also need to address slow onset events, such as increased droughts, desertification, environmental degradation and rising temperatures, which undermine agricultural livelihoods and reduce food security. In this context, it will be important to monitor and understand the regional particularities of related

displacement patterns and their various causes, and to develop and support climate change adaptation frameworks which comprehensively integrate internal displacement from a human rights-based approach. Increased awareness, research and monitoring mechanisms are necessary in order to understand better the possible impact of displacement caused by global megatrends, for example human mobility and population growth, and factors such as climate change, and to enable Governments to anticipate, plan and adapt their socioeconomic and development structures and strategies.

(c) Internal displacement in urban contexts

57. One global trend which is expected to interact increasingly with internal displacement is the rapid urbanization being experienced in most parts of the world. By 2030, the urban population is expected to exceed 5 billion and it is estimated that 80 per cent of that number will live in urban centres in the developing world. At present, over one third of all urban dwellers in the world live in precarious informal settlements and slums, and in many countries this figure can be above 50 per cent (A/66/285, para. 66; A/HRC/19/54). With rapid urbanization in developing countries in coming years, much of which is likely to be unplanned, those informal settlements are expected to grow exponentially, as are housing costs — another trend predicted to continue. Moreover, factors related to climate change, such as the difficulty in securing traditional livelihoods in parts of some countries, increased frequency of natural disasters, and conflicts, are further push factors for rural to urban migration — often through forced displacement.

58. While urban environments can often provide a conducive setting for internally displaced persons to rebuild their lives, they also present important protection and other challenges. This is especially the case since internally displaced persons, who usually live within host communities rather than in defined camp settings, can be difficult to identify and assist in urban contexts. While precise estimates, including of future displacement, are not available, internal displacement, including secondary displacements, connected to the global trend of largely unplanned rapid urbanization, stands out as an issue meriting much more attention and data collection. Situations of unplanned migration or displacement to urban areas are more likely to result in a lack of security of housing or land tenure and in settlement in hazard prone areas, often by marginalized or vulnerable populations, such as internally displaced persons. In turn, this is likely to lead to more forced internal displacements due to the threat of or actual natural disasters, for example flooding or mudslides, in those areas; mass evictions for development projects or other reasons as cities try to modernize and enforce urban planning and decongestion; or urban violence. More work on internal displacement in urban contexts will continue to be required, including from the perspective of urban planning, in relation to emergencies and natural disasters in urban areas, humanitarian and development assistance and guidelines in cases of mass eviction, and from the point of view of local integration as a durable solution in urban areas (see A/HRC/19/54 for recommendations).

(d) Displacement issues related to criminality and proliferation of non-State armed groups

59. Internal armed conflicts and violence continue to be a major cause of internal displacement and often lead to situations of protracted displacement and some of the most egregious human rights violations. That situation is aggravated in the case of asymmetric armed conflict between States and one or more non-State armed groups,

for example militia groups, paramilitary groups or armed gangs, and the increasing intersection of political and criminal violence. Non-State armed groups, for example often use sexual violence as a method of warfare or in order to forcibly displace civilian populations, frequently hinder or block access to humanitarian assistance and leave behind landmines and improvised explosive devices which impede returns.

60. In particular, there is increasing interest in and research on internal displacement caused by violence linked to organized crime in situations which do not reach the threshold of armed conflict. In that context, there are indications of an increased reference to and use of humanitarian categories, actors and responses (including with regard to internal displacement) to conflicts and situations of armed violence where criminality plays an important role. An example is the debate around responses relating to internal displacement in situations of violence stemming from the activities of drug cartels or fighting between the police, the military and drug gangs.[41] It will be important to strengthen monitoring of those causes of internal displacement and their humanitarian and human rights consequences, and of accountability mechanisms in relation to that issue[42] and awareness-raising among all parties on applicable national and international rules and responsibilities, including with respect to the prohibition of forced displacement.

61. Relatedly, there appears to be a growing interest in regulating the State's general obligations to victims of organized violence and armed conflict which have led to displacement, in terms of protection, justice and reparations processes.[43] In some cases, obligations towards internally displaced persons have been integrated within general obligations towards victims, a development which can be positive to the extent that the specific needs of internally displaced persons are given adequate consideration in response strategies.[44]

2. Reflections on focus areas

62. A significant amount of guidance and important advances have been achieved over the past two decades on key displacement issues and challenges, such as gender and displacement, methodologies in relation to needs assessments, data collection, and participatory and community-based approaches. Much of this work borrowed from the refugee context, and in some instances the specificities of internal displacement are still being articulated. In some areas, the limitations of previous approaches and methods are being seen, and emerging challenges and new focus areas are being identified.

63. The significant body of work in the area of gender and displacement, for example, has resulted in the recognition that displacement affects women and men differently and that, as a result, they may have specific protection and assistance needs. Yet, at the present juncture, it may be opportune to examine the level of impact on the ground of approaches in this area, and to consider alternative strategies

[41] See www.internal-displacement.org/countries/mexico, for studies on this issue in relation to Mexico, including "Generalized criminal violence in Mexico: basis, priorities, and challenges for humanitarian engagement" by Sebastián Albuja, 30 June 2011.

[42] See Guiding Principles, Principle 2; Kampala Convention, arts. 5.11 and 7.5.

[43] See various articles on this issue and on non-State armed groups more broadly in Refugee Studies Centre, *Forced Migration Review*, Issue 37, March 2011, pp. 4-42.

[44] For example, Colombia: Law 1448 on Victims and Land Restitution, of 10 June 2011, art. 3, and chap. III; www.unhcr.org/refworld/docid/4f99029f2.html.

for promoting the skills, resources and meaningful participation of internally displaced women, at all levels. For those reasons, the mandate will dedicate its 2013 report to the Human Rights Council to the issue of internally displaced women. Other issues also merit study, such as responses to internally displaced persons living outside of camp settings, and the specific protection and assistance needs of migrants affected by internal displacement in their host countries.

64. Further areas in need of strengthened and more focused attention include preparedness, prevention and mitigation frameworks relating to internal displacement; norms relating to appropriate compensation of or reparation to internally displaced persons; climate change and approaches for addressing displacement in slow onset disasters; and bridging of the humanitarian/development gap, which continues to be both structural and operational. The need for greater support can also be envisaged in order to strengthen the role and capacity of national human rights institutions in the protection of the rights of internally displaced persons; to assist States in addressing the administrative and structural challenges faced by central and local authorities that impede effective responses to situations of internal displacement; and to assist regional institutions and States in the development of policy and legal frameworks on internal displacement, in line with international standards. While not exhaustive, the above list is representative of some of the opportunities and challenges in addressing internal displacement in coming years.

IV. Conclusions and recommendations

65. **Impressive advances in the response to internal displacement have been achieved over the past two decades, at the normative, operational and institutional levels. After the recognition of the phenomenon in the early 1990s, the subsequent development of the Guiding Principles provided a much needed framework enabling Governments to exercise their responsibilities more effectively in situations of internal displacement, as well as important guidance for humanitarian actors and the United Nations. With the growing use of the Guiding Principles, and thanks to capacity-building and training activities over the years, many States have now adopted their own national legal and policy frameworks and, in Africa, the Kampala Convention, the first binding regional instrument relating to internally displaced persons is expected to come into force imminently. At the institutional and operational levels, the cumulative body of work of this mandate and the humanitarian reforms undertaken over the past 20 years have led to more coordinated, systemic and predictable responses to situations of internal displacement. Together with the efforts of national authorities and non-governmental organizations, both international and national, the above advances have made possible protection, assistance and durable solutions for millions of internally displaced persons.**

66. **At the same time, internal displacement remains one of the world's most significant human rights and humanitarian challenges, as millions of people continue to be internally displaced every year by conflict, violence, human rights violations, disasters and development projects. Megatrends, such as rapid urbanization, human mobility and population growth, and other factors, such as increased natural disasters and climate change (which exert social and political pressures, and increase competition over scarce resources and livelihoods) are expected to further affect the magnitude and patterns of internal**

displacement in the future. In this context, responses to internal displacement situations will require that States and international and civil society actors be ready to adopt comprehensive frameworks which address all types and stages of internal displacement, address new issues or areas in which responses need to be strengthened, and pay particular attention to prevention and durable solutions strategies.

67. **In view of the above, the Special Rapporteur makes the following recommendations to:**

National authorities

(a) **Adopt comprehensive national policy, institutional and legal frameworks to address internal displacement, in line with the Guiding Principles, including disaster preparedness and disaster management laws, and develop the necessary awareness, capacity, financial and administrative mechanisms and political willingness to implement them in practice;**

(b) **Ratify and implement the Kampala Convention — for member States of the African Union; implement the Pact on Security, Stability and Development in the Great Lakes Region — for member States of the International Conference on the Great Lakes Region;**

(c) **Develop strategies and take measures which will contribute to preventing internal displacement and promoting durable solutions as soon as possible, including by building resilience and mitigating the negative impact of displacement on the human rights of internally displaced persons. Measures which have been shown to have positive effects include good practices in relation to, inter alia, conflict resolution mechanisms, including in relation to land disputes; civil status, for example birth registration, and property title registries; contingency strategies, early-warning systems and community intervention mechanisms; mechanisms for the meaningful participation of internally displaced persons in decisions which have an impact on their lives; and capacity-building measures which enhance the capacity of all levels of Government, in particular local authorities, and of civil society to address internal displacement;**

(d) **Take the necessary measures to ensure accountability for violations of applicable international law, including by non-State actors, which cause arbitrary displacement; promote and facilitate the participation of internally displaced persons in political, reconciliation and peace processes which affect them; and establish the necessary conditions to enable internally displaced persons to find the durable solution of their choice and rebuild their lives at the earliest opportunity;**

International community, and humanitarian and development actors, as relevant

(e) **Continue to promote and strengthen the work of regional organizations and mechanisms on all aspects of internal displacement, including with regard to: the development and implementation of regional instruments and guidance on internal displacement, in line with international standards; human rights protection; coordination of humanitarian and other related activities; advocacy and capacity-building; and monitoring and early-warning mechanisms which identity specific patterns and causes of internal displacement in the region;**

(f) Monitor, support and build capacity to address climate change-related internal displacement, including displacement due to both sudden and slow onset natural hazards. In that regard, relevant international and national actors should, inter alia, increase awareness and understanding of displacement caused by slow onset natural disasters; develop concrete strategies and measures to follow up on relevant provisions of the Cancun Agreement; and promote a human rights-based approach in all actions and strategies to address displacement related to natural disasters and climate change. Relevant actors should also develop adaptation measures which are comprehensive and include disaster risk reduction and prevention, and the minimization of internal displacement, as well as durable solutions; promote mechanisms for the engagement of affected communities; and develop guidance for States on how to ensure that displacement is taken into account in the climate change debate, on available normative standards and on the human rights implications of that type of displacement;

(g) Continue to identify and address the various causes of internal displacement, emerging issues and areas which need to be strengthened through improved understanding, methodologies, approaches and responses. Such areas include, inter alia, the impact of global megatrends on internal displacement; responses to internally displaced persons outside of camps; frameworks and approaches to better promote the meaningful participation and empowerment of internally displaced women; strategies to revive practical and political action in protracted displacement situations; and bridging of the humanitarian/development gap by analysing and addressing the structural, institutional and operational factors which sustain it and impede early recovery and durable solutions;

(h) Support actors within the international humanitarian and human rights system, including the Inter-Agency Standing Committee and members of the cluster system, to take the above challenges fully on board, and ensure that related policies and decisions specifically include and address the displacement-specific protection, assistance and durable solution needs of internally displaced persons; advocate for and support development actors in ensuring full respect for the human rights of internally displaced persons in the implementation of development projects; further integrate the human rights of internally displaced persons into the work of the universal periodic review process and of human rights treaty bodies;

(i) Support civil society and national human rights institutions in integrating the human rights of internally displaced persons into their national workplans, through increased awareness-raising and capacity-building;

(j) Continue to promote and support the work of the mandate on the human rights of internally displaced persons, supported by OHCHR, including the mandate's continued contribution to the development of normative frameworks and guidance; concrete improvements on the ground through its engagement with States and civil society; its close cooperation with key United Nations entities such as UNHCR and the Office for the Coordination of Humanitarian Affairs; its participation in the Inter-Agency Standing Committee; and its unique mainstreaming and advocacy role.